REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RA 9513; RR 16-05; Secs. 112(A); 108(B)(7) NIRC	
BIR Ruling No. 358-17; BIR Ruling No. 078-10	
VAT-0511-2020	
SEP 09 2020	

BOARD OF INVESTMENTS
Industry & Investments Building
385 Sen. Gil J. Puyat Avenue
Makati City

Attention: **Mr. Domingo I. Bagaporo**
Director, (IASD)

Gentlemen:

This refers to your letter requesting, on behalf of Solutions Using Renewable Energy, Inc. (SURE), for clarification on the tax incentives related to renewable energy projects, to wit:

1. Whether the payment for value-added tax (VAT) on importation of capital equipment may be recovered through tax credit; and

2. With regard to its local supply and equipment, how can SURE avail the VAT exemption when it outsources most of its services including the local procurement to its parent company which is not renewable energy registered.

In reply, please be informed, as follows:

1. Input Taxes Paid on the Importation of Capital Equipment may be Recovered through Tax Credit or Refund.

Section 108(B)(7) of the Tax Code of 1997, as amended by Republic Act (RA) No. 9337, and implemented by Section 4.108-5 (b)(7) of Revenue Regulations (RR) No. 16-2005, as amended, provide as follows:

> "(b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx

ga

VAT-0511-2020
SEP 09 2020

> (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."

The afore-cited provisions of Section 108(B)(7) of the Tax Code of 1997, as amended, and Section 4.108-5 (b)(7) of RR No. 16-2005, as amended, expressly state that the sale of power or fuel generated through renewable sources of energy is considered subject to VAT at zero percent (0%) rate. Thus, it is clear that SURE, being a Renewable Energy (RE) Developer, as endorsed by the Board of Investments and presumably registered and certified by the Department of Energy (DOE) is entitled to VAT zero rating on its sale of power or fuel generated through renewable sources of energy. *(BIR Ruling No. 358-17 dated August 9, 2017)*

Furthermore, in view of the zero-rated sales of power or fuel by SURE, any input tax on its importation of capital equipment and local purchases of goods and services directly related or attributable to such zero-rated sales shall be available as tax credit or refund pursuant to Section 112(A) of the Tax Code of 1997, as amended by RA 9337, which provides:

> "Sec. 112. Refunds or Tax Credits of Input Tax. —
>
> (A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx xxx."

Anent the above, pertinent portion of Section 4.112-1 of RR No. 16-2005, as amended, provides that —

> "(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services —
>
> A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

ga
K

xxx xxx xxx

Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate."

Accordingly, the input tax paid by SURE on its importation of capital equipment may be recovered by applying for the issuance of a tax credit certificate/refund of input taxes directly attributable to the sale of power or fuel generated through renewable sources of energy, which must be filed within two (2) years after the close of the taxable quarter when such sales were made. *(BIR Ruling No. 078-10 dated September 23, 2010)*

2. **There is no VAT exemption on the outsourced services and local procurement made by the parent company of SURE which is not an RE Developer as registered and certified by the DOE.**

Section 15(g) of Republic Act (RA) No. 9513, otherwise known as "Renewable Energy Act of 2008", provides that:

"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,

K

VAT-0511-2020
SEP 09 2020

including, but not limited to, the services performed by subcontractors and/or contractors."

It is clear from the afore-quoted provisions of Section 15(g) of RA 9513 that only RE Developers are entitled to VAT zero-rating on their local purchases of goods and services needed for the development, construction and installation of their power plant facilities.

Considering that SURE outsourced to its parent company, which is not an RE Developer, the services and procurement of goods, properties and services needed for the development, construction and installation of its plant facilities, SURE cannot avail of the VAT zero-rating with regard to those purchases made by its parent company.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

036578

K-1
gps(BOI-SURE)