REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

REVENUE MEMORANDUM CIRCULAR No. 21-2024

SUBJECT: Clarification on the Answer to Question No. 31 of Revenue Memorandum Circular (RMC) No. 49-2022 in Relation to Revenue Regulations (RR) No. 4-2022, Implementing Section 295(F) of the National Internal Revenue Code (Tax Code) of 1997, as Amended by Republic Act (RA) No. 11534, Otherwise Known as the Corporate Recovery and Tax Incentives for Enterprises Act or CREATE Act

TO: All Internal Revenue Officers and Others Concerned

This circular is hereby issued to address the concern pertaining to the application of the answer in Q & A No. 31 of RMC No. 24-2022, as revised by RMC No. 49-2022, in relation to RR No. 4-2022, implementing Section 295(F) of the Tax Code of 1997, as amended by Republic Act No. 11534 or the CREATE Act.

The revised answer in Q & A No. 31 pursuant to RMC No. 49-2022 required the following types of Registered Export Enterprises (REE) to change their registration status from value-added tax (VAT)-registered entity to non-VAT:

a. *Within two (2) months from the expiration of their Income Tax Holiday (ITH):* Those whose sales are generated only from the registered activity and have shifted from ITH to 5% Gross Income Tax (GIT) or Special Corporate Income Tax (SCIT) regime; and

b. *Within two (2) months from the effectivity of RMC No. 49-2022:* Those enjoying 5% GIT regime but are still VAT-registered at the time the CREATE Act took effect.

The said RMC likewise provides that if the taxpayer has other activities other than those registered with the Investment Promotion Agency (IPA) that are subject to VAT (i.e., VAT at 12% and 0%), it shall remain as a VAT taxpayer and shall report the sales in the VAT returns as VATable, zero-rated and/or VAT-exempt, as the case may be.

On the basis of the said guidelines, some importers of petroleum products located in freeport zones or special economic zones which do not have other activities other than those registered with the IPA changed their registration status from VAT-registered entity to non-VAT in order to avail of either the 5% GIT or SCIT regime.

However, a disparity of treatment inadvertently arose between petroleum importers located inside the freeport zone or special economic zone and those located within the customs territory in the application of the guidelines in Q & A No. 31 of RMC No. 49-2022 in conjunction with the intention of Section 295 (F) of the Tax Code of 1997, as amended, which states:

"(F) Persons who directly import petroleum products defined under Republic Act No. 8479, otherwise known as the 'Downstream Oil Industry Deregulation Act of 1998', for resale in the Philippine customs territory and/or in free zones as defined under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, shall not be entitled to the foregoing tax and duty incentives, and shall be subject to appropriate taxes imposed under this Code.

Any law to the contrary notwithstanding, the importation of petroleum products by any person, including registered business enterprises shall be subject to the payment of applicable duties and taxes as provided under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, and this Code, respectively, upon importation into the Philippine customs territory and/or into free zones as defined under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act:

Provided, That the importer can file for claims for the refund of duties and taxes applicable under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, and this Code, respectively, for direct or indirect export of petroleum products, and/or tax-exempt sales under the Customs Modernization and Tariff Act and other special laws within the period provided therein:

Provided, further, That the importers who subsequently export fuel, subject to the appropriate rules of the fuel marking program, may apply for a refund of duties and taxes, as applicable under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, and this Code."

Based on the foregoing, REE petroleum importers, including those located inside the freeport zones or special economic zones, were required to pay the applicable duties and taxes on their import transactions including VAT. Correspondingly, they may be refunded of the duties and taxes for the direct or indirect export of petroleum products, and/or tax-exempt sales pursuant to RR No. 4-2022.

In relation thereto, under Section 112(A) of the Tax Code of 1997, as amended, provides that only VAT-registered persons or entity may file for VAT refund. Hence, this clarification.

Therefore, the Bureau hereby clarifies that REEs enjoying the 5% GIT or SCIT located within freeport zones or special economic zones, which directly import petroleum products and do not have other activities subject to VAT, shall be permitted to register as a VAT taxpayer to allow them to file for refund of input VAT incurred from importation of petroleum attributable to zero-rated sales pursuant to RR No. 4-2022.

This Circular shall be applied prospectively. Previous transactions of petroleum products importers located in freeport zones or special economic zones, which changed their status from VAT to non-VAT pursuant to RMC No. 49-2022, are not covered by this Circular.

All other issuances inconsistent herewith are hereby repealed and modified accordingly.

8:25 [illegible]

All internal revenue officers and employees are hereby enjoined to give this Circular a wide publicity, as possible.

This Circular shall take effect immediately.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

K1/RVU& *EACRII*

8:25 AM
FEB 7 2024