GUIDELINES TO CLARIFY IMPLEMENTATION OF REVENUE REGULATIONS NO. 2-88; SALE OF RAW MATERIALS TO EPZA AND SALE OF GOLD TO THE CENTRAL BANK.

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Purpose

This Order prescribes the guidelines to implement the understanding by and among the representatives of the Bureau of Internal Revenue, the Board of Investments, the Philippine Chamber of Commerce and Industries, the Garments Association, the Textile Mill Association, the Chamber of Mines, the Confederation of Garment Exporters, and the suppliers group, held at the BIR National Office on January 16, 1992.

Background

1. The issuance of Revenue Regulations No. 2-88 dated February 15, 1988 was prompted by the representations of the Board of Investments that by zero-rating the sale of raw materials to BOI-registered exporters exporting more than 70% of their total annual production, the local suppliers will be placed in a better position to successfully compete with the foreign suppliers of imported raw materials.

2. Various VAT Rulings (i.e. 499-88, 073-89, 200-89) have been issued stating that the sale of goods to EPZA-registered firms shall be zero-rated pursuant to Section 77 (1) of the Omnibus Investment Code.

3. Similarly, various VAT Rulings (i.e. 378-88, 239-89, 036-90) have been issued stating that the sale of gold to the Central Bank is zero-rated pursuant to Executive Order No. 581, treating such sale as export sale in connection with the imposition of export tax.

4. On October 29, 1991, the Commissioner approved an Inter-Office Memorandum submitted by the Assistant Commissioner (Legal) proposing to revoke all of the preceding issuances.

Policy Statements

1. The provisions of Revenue Regulations No. 2-88 should be continued because the same policy considerations that justified its issuance still exists.

2. Various BIR Rulings to the effect that the sale of goods to EPZA-registered firms are zero-rated shall be modified so as to limit the scope of the zero-rated sales to raw materials which forms part of the finished goods which are eventually exported.

3. To extend the benefit of zero-rating in other cases of indirect export provided under Article 23 of E.O. No. 226 on the sale of raw materials that form part of finished products that are eventually exported.

4. BIR Rulings to the effect that sale of gold to the Central Bank is zero-rated have been revoked, hence, sale by any person including mining companies to the Central Bank shall be subject to the 10% VAT.

Guidelines

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1. Pre: Sale of raw materials to BOI-registered exporters (Revenue Regulations No. 2-88)

- Consider these regulations as having been in effect without interruption from the date of its issuance as if it were not disturbed at all by the issuance of the Inter-Office Memorandum of the Assistant Commissioner (Legal) dated October 29, 1991:

- Transactions prior to the issuance of RR 2-88 which would have qualified for effective zero-rating shall be exempt from VAT provided, that the seller did not issue VAT invoices and that the buyer did not claim input tax credits;

- Processing of applications for renewal of zero-rating which was stopped shortly after the issuance of the aforesaid Inter-Office Memorandum shall be resumed and the effectivity of the approval shall retroact to January 1, 1992; provided that the seller did not issue VAT invoices and that the buyer did not claim input tax credits;

- Processing of new applications for zero-rating shall take effect upon approval.

2. Re: Sale of goods to EPZA-Registered firms

Various BIR Rulings to the effect that the sale of goods to the EPZA registered firms are zero-rated shall be upheld and considered as not having been disturbed at all by the issuance of the Inter-Office Memorandum dated October 29, 1991; Provided: that the goods sold are raw materials and that the same shall form part of the finished goods which are eventually exported.

3. Re: Sale of gold to the Central Bank

- Sale of gold to the Central Bank by any person, including mining companies, shall be considered local sales for VAT purposes effective January 1, 1988; and

- This position is stated clearly in VAT Ruling No. 008-92 dated January 23, 1992; and, the same is given retroactive effect so that previous inconsistent rulings are considered superseded because the government is not estopped to collect taxes unpaid on account of errors/mistakes of its agents/officials and there could be no vested right arising from an erroneous interpretation of the law (Hilado vs. Collector of Internal Revenue, 100 Phil. 288). Moreover, there would be no prejudice to affected taxpayers, as contemplated under Section 246 of the Tax Code, inasmuch as their claims for refund of input taxes are not lost because the same would be allowed in the following cases:

a. on their output taxes on sales of gold to the Central Bank;

b. on their output taxes on sales other than (a) above; and

c. as deductions to income tax under Section 29 of the Tax Code.

This Order takes effect immediately.

Adopted: 14 May 1992

(SGD.) JOSE U. ONG
Commissioner of Internal Revenue

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