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TAX TREATMENT OF SALES OF GOODS, PROPERTY AND SERVICES MADE BY A SUPPLIER FROM THE CUSTOMS TERRITORY TO A PEZA REGISTERED ENTERPRISE; AND SALE TRANSACTIONS MADE BY PEZA REGISTER...

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SECTION 1. Scope. — This Circular is being issued to consolidate and harmonize all the pertinent tax laws and their corresponding implementing rules and regulations in respect of sales of goods, property and services to and from the ECOZONES, in relation to the provisions of R.A. No. 7916, as amended by R.A. No. 8748, entitled "The Special Economic Zone Act of 1995" which created the Philippine Economic Zone Authority (PEZA).

SECTION 2. Background . — In general, enterprises registered and operating under the said Act, otherwise known as ECOZONE or PEZA registered enterprises, shall only be imposed with a 5% special tax, based on "gross income earned" in lieu of all taxes, except the real property tax. However, this tax incentive only applies in respect of the registered enterprise's operations within the ECOZONE. The ECOZONES "are selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers. An ECOZONE may contain any or all of the following: industrial estates, export processing zones, free trade zones, and tourist/recreational centers." (SEC. 4 (a), R.A. No. 7916). The ECOZONE "shall be managed and operated by the PEZA as a separate customs territory." (SEC. 8, id.) The term "Customs Territory" means "the national territory of the Philippines outside of the proclaimed boundaries of the ECOZONES except those areas specifically declared by other laws and/or presidential proclamations to have the status of special economic zones and/or free ports." (Sec. 1 (g), PEZA Rules and Regulations). Generally, products manufactured or produced within the ECOZONE are destined for export to foreign countries. While such products, under certain conditions, may also be sold to buyers in the Customs Territory, i.e., outside the ECOZONE, such sales are technically considered as importation by such buyer from the Customs Territory. Since the ECOZONE is technically treated as another separate Customs Territory, the buyer is treated as an importer and is imposed with the corresponding import taxes and customs duties on his purchase of products from within the ECOZONE.

While all ECOZONE enterprises are not necessarily manufacturer-exporters of products considering that there are also service enterprises registered as ECOZONE enterprises, however, taken as a whole, all their integrated activities eventually translate into manufactured products which are either actually exported to foreign countries, in which case, no VAT must form part of its export price; or actually sold to buyers from the Customs Territory, in which case, 10% VAT shall be paid thereon by such buyers, consistent with the "Cross Border Doctrine" of the VAT system.

The Philippines' Value Added Tax (VAT) law adheres to the "Cross Border Doctrine" of the VAT System, which basically means that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of the VAT. Conversely, those destined for use or consumption within the Philippines shall be imposed with the 10% VAT. Accordingly, interpretation of the provisions of the VAT law

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has been harmonized with the "Cross Border Doctrine".

SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. —

(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

(a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of service. — This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of Service. — This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.

SECTION 4. Tax Treatment Of Sales Made By A VAT-Exempt Supplier From The Customs Territory, To A PEZA Registered Enterprise. — Sale of goods, property and services by VAT-Exempt Supplier from the Customs Territory, to a PEZA-registered enterprise shall be treated exempt from VAT, pursuant to Sec. 109, in relation to Sec. 236, NIRC, regardless of whether or not the PEZA registered buyer is subject to taxes under the NIRC, or enjoying the 5% special tax regime, or a registered manufacturer-exporter the "Cross Border Doctrine" of the VAT System to the contrary notwithstanding.

SECTION 5. Tax Treatment Of Sales Made By A PEZA Registered Enterprise. —

(1) Sale of goods (i.e., merchandise), by a PEZA-registered enterprise, to a buyer from the Customs Territory (i.e., domestic sales). — This case shall be treated as a technical importation made by the Buyer. Such Buyer shall be

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treated as an importer thereof and shall be imposed with the corresponding import tax/es (i.e., VAT or VAT plus excise tax, as the case may be), pursuant to Sec. 107, Title IV and Title VI, NIRC, in relation to Sec. 26, R.A. No. 7916, as implemented by Sec. 2, Rule VIII, PART V of the PEZA rules and regulations entitled "Rules and Regulations to Implement Republic Act No. 7916." The registered enterprise's "gross income earned" therefrom shall be subject to the 5% special tax pursuant to Sec. 24 of R.A. No. 7916: Provided, however, that its sales in the Customs Territory do not exceed the threshold allowed or permitted for such sales, pursuant to the pertinent provisions of the PEZA rules and regulations: Provided, further, that for income tax purposes, if such sales should exceed the aforesaid threshold, its income derived from such excess sales shall be imposed with the normal income tax pursuant to the provisions of Title II, NIRC: Provided, further, that in computing for the income tax due on such excess sales, its net income from such excess sales shall be determined in accordance with the method of general apportionment pursuant to the provisions of Sec. 50, NIRC, (i.e., compute its total net income from total sales, then, compute its net income from such excess sales by general apportionment, as follows: Excess sales divided by total sales times total net income from total sales equals net income from excess sales).

(2) Sale of Services by a PEZA Registered Enterprise to a Buyer from the Customs Territory. — This type of transaction is not embraced by the 5% special tax regime governing PEZA-registered enterprises pursuant to R.A. No. 7916, as implemented by the PEZA rules and regulations hence, such seller shall be subject to the 10% VAT, pursuant to Section 108 or to the percentage tax, pursuant to Title V, whichever is applicable, and to the normal income tax on income derived therefrom, pursuant to Title II, NIRC. Such income tax shall be computed in accordance with the method of general apportionment provided in the immediately preceding paragraph.

(3) Sale of Goods, by a PEZA Registered Enterprise, to Another PEZA Registered Enterprise (i.e., Intra ECOZONE Sales of Goods). — Its sale of goods or property to another zone enterprise shall be exempt from VAT, pursuant to Sec. 109(q), NIRC, in relation to Sec. 24, R.A. 7916, as implemented by Sec. 1, Rule VIII, PART V, of the PEZA implementing rules and regulations.

(4) Sale of Service by ECOZONE Enterprise, to Another ECOZONE Enterprise (Intra ECOZONE Enterprise Sale of Service):

(a) If PEZA-Registered Seller is Subject to the 5% Special Tax Regime. — Exempt from VAT or any percentage tax, pursuant to Sec. 24, R.A. 7916.

(b) If PEZA-Registered Seller is Subject to Taxes Under the NIRC . — Subject to zero percent (0%) VAT pursuant to the "Cross Border Doctrine" of the VAT system, regardless of the type or class of PEZA registration of the PEZA enterprise. Buyer, since the use for or benefit from such purchase of service shall eventually be translated to actual export of goods (i.e., shipment of goods to a foreign country, which is subject to zero percent (0%) VAT, or translated into technical export of goods (i.e., sale of goods to a buyer from the Customs Territory, which is treated as importation by such buyer, hence, subject to 10% VAT against the said buyer).

SECTION 6. Repealing Clause. — Any BIR Ruling, if inconsistent herewith, is hereby considered amended, modified or revoked accordingly.

Adopted: 15 Oct. 1999

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Commissioner of Internal Revenue

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