

**[ BIR Revenue Memorandum Circular No. 40-2015, July 15, 2015 ]**

**CLARIFYING THE NATURE AND EXTENT OF THE AGRICULTURAL COOPERATIVE BEING THE PRODUCER OF SUGAR FOR EXEMPTION FROM ADVANCE VAT AND PERCENTAGE TAX PURPOSES PURSUANT TO SECTION 5(B)(C) OF REVENUE REGULATIONS (RR) NO. 8-2015, IN RELATION TO SECTION 4(A) OF RR NO. 13-2008, AND IN LINE WITH SECTION 8(B.2.1.2) OF THE JOINT RULES AND REGULATIONS IMPLEMENTING ARTICLES 60, 61 AND 144 OF REPUBLIC ACT (RA) NO. 9520, OR THE COOPERATIVE CODE OF 2008**

*Adopted: 15 July 2015*

*Date Filed: 10 September 2015*

**Section 1. BACKGROUND:**

Section 109 (1)(L) of the National Internal Revenue Code (NIRC), as amended, exempts from Value-Added Tax (VAT) sale by agricultural cooperatives duly registered with the Cooperative Development Authority (CDA) **of their produce**, whether in its original state or processed form, to non- members.

Section 5(b) of Revenue Regulations (RR) No. 8-2015 (dated 22 May 2015),<sup>[1]</sup> on the other hand, provides that the withdrawals of Sugar<sup>[2]</sup> for sale to non- members is subject to payment of advance VAT or percentage, **tax if the agricultural cooperative is not the producer** of Sugar. Section 5(c) of RR8-2015 likewise provides that **if the seller-cooperative is not an agricultural producer** but merely purchases the Sugar from planter, whether members or non-members, or transfer the Sugar to cooperative through assignment, its sale of the resulting Sugar to another agricultural cooperative shall be subject to VAT and its withdrawals from the Sugar Refinery/Mill will only be allowed upon payment of the advance VAT or Percentage Tax.

Finally, Section 8(b.2.1.2) of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of Republic Act (RA) No. 9520, or the Cooperative Code of 2008, states that sale by agricultural cooperatives to non-members can only be exempted from VAT **if the producer of the agricultural products sold is the cooperative itself**. If the cooperative is not the producer (e.g. trader), only those sales to its members shall be exempted from VAT.

From the aforesaid provisions of laws and revenue issuances, it is, thus, clear that in order that withdrawals of Sugar by agricultural cooperative for sale to non-members or to another agricultural cooperative be exempt from advance VAT or Percentage Tax, the agricultural cooperative **must be the producer of Sugar**.