

**[ BIR REVENUE MEMORANDUM CIRCULAR NO. 61-2005, October 27, 2005 ]**

**CLARIFYING THE VAT PROVISIONS OF R.A. 9337 APPLICABLE TO THE POWER INDUSTRY**

This Revenue Memorandum Circular is issued in order to publish and clarify certain provisions of Revenue Regulations No. 14-2005 as amended by Revenue Regulations No. 16-2005, implementing the Tax Code of 1997, as amended by Republic Act No. 9337, affecting generation, transmission, and distribution companies as well as electric cooperatives as defined in R.A. 9136 (EPIRA) subject to the value added tax as well as their suppliers and customers effective November 1, 2005.

*Q1 - Beginning November 1, 2005, what kind of business tax under the NIRC applies to the sale of electricity by generation, transmission, and distribution companies as well as electric cooperatives?*

A1 - Generation, transmission, and distribution companies as well as electric cooperatives shall be subject to the value-added-tax on their sale of electricity pursuant to the provisions of Section 108, in relation to Section 109, all of the Tax Code, as amended by Republic Act No. 9337.

Section 108(A) of the Tax Code, as amended, imposes a value added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The 10% VAT rate may however be raised by the President effective January 1, 2006, if any of the following conditions has been satisfied:

"(i) Value-added tax collections as a percentage of Gross Domestic Product (GDP) of the previous years exceeds two and four-fifths percent (2 4/5%); or

"(ii.) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%)."

Q2- *How do you compute Gross Receipts, for VAT purposes, of generation, transmission, and distribution companies as well as electric cooperatives?*

A2- For purposes of this RMC, Gross Receipts shall refer to the following:

- a. The total amount paid to the generation companies for the sale of electricity and related ancillary services. The latter is billed and collected by the transmission company which shall remit such collection to the concerned generation company.
- b. The total amount paid to the National Transmission Corporation for the transmission of electricity and related electric services.
- c. The total amount paid to the Distribution Utilities, which include Electric Cooperatives, for the distribution of electricity and related electric services.

Gross Receipts shall not include the Energy Tax under Batas Pambansa 36, the Universal Charges implemented under the EPIRA (RA 9136), Benefits to Host Communities under Energy Regulation 1-94; and security deposit for metering machine including interests provided that when applied to the consumer's liability it shall be subject to VAT.

Gross Receipts shall be net of discounts and gross of penalties.

Q3 - Being liable to the value added tax, what are the administrative requirements that must be complied with by generation, transmission, and distribution companies as well as by electric cooperatives?

A3 - The administrative requirements that must be complied shall include the following activities:

1. Before November 1, 2005
  - a. Registration -
    - i. BIR Form No. 1901 (for Individual)
    - ii. BIR Form No. 1903 (for Non-Individual)
    - iii. BIR Form No. 1905 (Registration Update)

b. Invoicing -

- i. BIR Form No. 1906 (Application for Authority to Print Receipts and Invoices)
- ii. BIR Form No. 1907 (Application for Permit to Use Cash Register Machine/Point-of-Sale Machine)

c. Bookkeeping -

- i. BIR Form No. 1900 (Application for Authority to Use Loose Leaf/Computerized Books of Accounts and/or Accounting Record)

2. On or after November 1, 2005

a. Filing of tax returns and payment of taxes -

- i. BIR Form No. 2550M (Monthly VAT Declaration)
- ii. BIR Form No. 2550Q (Quarterly VAT Return)
- iii. BIR Form No. 1702 (Quarterly Annual Income Tax Return)

b. Withholding of tax -

- i. BIR Form No. 1600 to 1604 (Withholding Tax Remittance Return)

c. Filing of inventories

Q4 - Generation companies are already registered as VAT zero-rated taxpayer, do they have to update their registration as VAT taxpayer subject to 10% regular rate?

A4 - Yes, they just have to fill up BIR Form No. 1905 for a change in status from VAT zero-rated to VAT 10% regular rate. If the applications are in order, new Certificates of Registration (BIR Form No. 2303) shall be issued to the applicants. At the same time, they shall surrender the original copy of their old VAT Certificate of Registration (BIR Form No. 1556/2303) to the appropriate revenue office.

Q5 - What is the penalty if the generation company did not update its registration before November 1, 2005?

A5- Failure to update registration from VAT zero-rate to VAT 10% regular rate does not exempt said company from their output tax liability on their sales of electric and other taxable transactions.

Q6 - Transmission and distribution companies as well as electric cooperatives are already registered with the appropriate revenue office as non-VAT taxpayers. Do they have to re-register with the same revenue office where they are presently registered?

A6- Yes. For this purpose they have to register as VAT taxpayers with Large Taxpayers Service or Large Taxpayer District Office in Makati City or Cebu City, if they have been officially identified and informed as large taxpayers;

otherwise, if the company is a non-large taxpayer it has to register with the Revenue District Office which has jurisdiction over its principal place of business at anytime before November 1, 2005. The taxpayer must file BIR Form No. 1905 (Taxpayers Record Update) changing its tax status from a non-VAT taxpayer to a VAT taxpayer. If the application is in order, a new Certificate of Registration (BIR Form No. 2303) as VAT taxpayer shall be issued to the applicant. The applicant shall surrender the original copy of its non-VAT Certificate of Registration (BIR Form No. 1556/2303) to the appropriate revenue office.

Q7 - Are generation companies which were already registered as VAT zero-rated taxpayers prior to RA 9337 entitled to the transitional input tax?

A7 - No, inventories attributable to the activities already subject to VAT prior to October 31, 2005 are no longer entitled to the transitional input tax since the actual input taxes thereon were already claimed by the taxpayers as credits in their VAT return or subject of refund or Tax Credit Certificate (TCC).

Q8 - Are transmission and distribution companies as well as electric cooperatives who are now classified as VAT taxpayers subject to the 10% rate entitled to the transitional input tax credits on their beginning inventories?

A8 - Yes, they shall be entitled to a transitional input tax equivalent to 2% on the inventory on hand on October 31, 2005 or on applicable date that the concerned taxpayer becomes liable to VAT, or the 10% value added tax, if evidenced by VAT invoices or receipts, whichever is higher, on the following:

- a. goods purchased for resale in their present condition;
- b. materials purchased for further processing, but which have not yet undergone processing;
- c. goods which have been manufactured by the taxpayer;
- d. goods in process for sale; or
- e. goods and supplies for use in the taxpayer's trade or business as a VAT- registered person.

Q9 - If the taxpayer has inventories of goods as of October 31, 2005 consisting of goods purchased without VAT components (e.g. fuel) and those with VAT components (spare parts, repair, supplies) how will he compute the allowable transitional input tax?

A9 - The transitional input tax shall be two percent (2%) of the value of the beginning inventory on hand or actual VAT paid on such goods, materials and supplies, whichever is higher, which amount shall be creditable against the output tax of the VAT registered person. The taxpayer is not allowed to claim 2% transitional input tax credit on his inventory of goods without VAT components.

Q10 - Is the entitlement for transitional input tax automatically available to taxpayers?

A10 - No. The taxpayers has to file an inventory list as of October 31, 2005 of such goods or supplies with the Revenue District Office where he is registered not later than November 30, 2005. The said list must show the quantity, description, and the amount of such goods or supplies. Furthermore, the taxpayer has to make a journal entry in his books of accounts recognizing such credit by debiting the input tax account. In case the taxpayer fails to comply with these requirements, he will lose the benefit of such credit.

Q11 - Is the utilization of the transitional input tax credit subject to the 70% cap?

A11- Yes, since the transitional input tax credit will be commingled with the current input tax credits, the same shall be subject to the 70% cap. (Sec. 4.111-1 in relation to Sec.4.110-7 of Revenue Regulations No. 16-2006)

Q12 - What amount of VAT shall be indicated on the face of the sales invoice for sales of electricity to the government considering that they