



Sen. Pia S. Cayetano
Chairperson, Committee on Ways and Means
Public Hearing on April 21, 2022
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Honoraria and Allowances of Poll Workers: To Tax or Not to Tax?

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The May 9, 2022 national and local elections have aroused great interest and participation among Filipinos as the electorate trooped to their respective poll precincts to decide who our leaders will be for the next six and three years, respectively.

Amidst the chaos and noise of political campaign rallies, one sector is also campaigning and rallying not for any position in government but for their plea to exempt their election honoraria and allowances from income tax – and these are our beloved public school teachers and other poll workers who serve in the electoral boards.

Statements in social media and news articles

decry the alleged increase in tax withholding from five percent (5%) to twenty percent (20%) on the travel allowances of teachers for their poll work. According to the Alliance of Concerned Teachers (ACT), their regional unions informed them that a twenty percent (20%) tax amounting to four hundred pesos (P400.00) will be withheld from the travel allowances of teachers in their poll duties.

ACT explained that since time immemorial, there were no taxes imposed on the compensation of poll workers. It was only in 2018 when the Bureau of Internal Revenue (BIR) imposed a five percent (5%) tax on the honoraria of teachers without providing them legal basis for such.

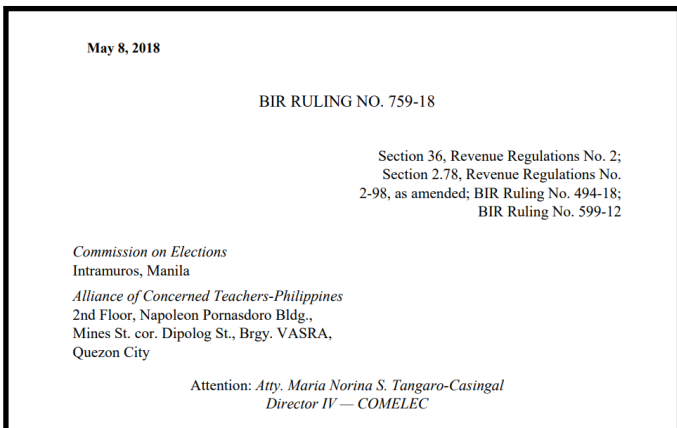
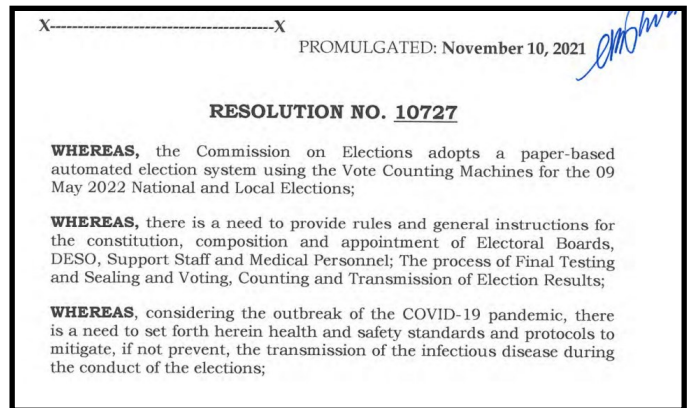
The only documents at that time as bases are BIR Ruling Nos. 494-18 and 759-18.

BIR Ruling No. 494-18 was issued on March 14, 2018 in response to the Commission on Election’s (COMELEC) request for legal opinion on whether or not honoraria and allowances to be received by public school teachers and other qualified citizens pursuant to RA No. 10756 are subject to withholding tax.

The ruling stated that “It is a well settled principle of taxation that income, in the broad sense, means all wealth which flows into the taxpayer other than mere return of capital” and that “based on this principle, it is without argument that ‘honoraria’ and ‘allowances’, no matter how negligible the amount, are wealth that flow into the hands of the recipient, hence, subject to income tax and, consequently, to withholding tax on compensation.”

BIR Ruling No. 759-18 was issued on May 8, 2018 to clarify BIR Ruling 494-2018 and to respond as well to the April 30, 2018 letter of the ACT which asserts that the honoraria and allowance of teachers are exempt from income tax and withholding tax.

instructions for the constitution, composition and appointment of Electoral Boards in connection with the May 9, 2022 National and Local Elections. The provisions on honoraria and allowances of poll workers were provided. Honoraria ranges from P3,000.00 to P7,000.00; travel allowance ranges from P1,000.00 to P2,000.00; Communication Allowance is pegged at P1,500.00; and Anti-COVID-19 Allowance amounts to P1,500.00. Thus, considering the “instant” stand of BIR, all of these are part of income and therefore will be subjected to income tax.



This difficult situation is what poll workers, most especially our public school teachers, want to be clarified and settled once and for all.

Good thing that Congress became the proper venue to address this. Measures seeking to exempt from income tax the election honoraria and allowances of poll workers have been discussed with the different stakeholders in both Chambers. On April 21, 2022, the Senate has conducted a public hearing on HB No. 9652 and SB Nos. 117, 1193, and 2456, and will draft the Committee Report for deliberations upon the resumption of Session on May 23.

In this particular ruling, the BIR clarified that “if the annual taxable income which includes the honoraria and allowances of teachers who will serve in the Electoral Boards does not exceed P250,000, such honoraria and allowances shall not be subject to income tax, and consequently to the withholding tax.” The said ruling also explained that “if the annual taxable income which includes the honoraria and allowances of teachers who will serve in the electoral boards exceeds P250,000, such honoraria and allowances shall be subject to income tax and consequently to the withholding tax on compensation.” However, “teachers and qualified persons serving in the electoral boards will just have to execute and submit to the COMELEC, prior to the release of the honorarium and allowances, a sworn declaration that their gross annual income does not exceed P250,000 in order to spare such from being subject to withholding tax.” This intricate process makes it very difficult for qualified teachers to avail of the income tax exemption.



On November 10, 2021, COMELEC promulgated Resolution No. 10727 which provided general

It is our hope that the final output or legislative measure that will come out from this will put an end to this recurrent and confusing situation. We want to have a law that will provide the proper tax treatment for election honoraria and allowances of poll workers. A law that is clear and certain. So that fast forward 2025 elections, this situation will not hound us once again.



The IT-BPM Sector: The Quest for a Hybrid Work Scheme

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The country's Information Technology-Business Process Management (IT-BPM) sector is currently in a quandary. Business enterprises within the industry that are registered with Investment Promotion Agencies (IPAs) are hard-pressed to choose between two (2) delicate options – convenience, productivity and morale of their employees, or continuous availment of incentives granted through Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE).

The dilemma stems from the rejection by the Fiscal Incentives Review Board (FIRB) of the proposal of the Philippine Economic Zone Authority on behalf of registered IT-BPM group to allow the extension of the Work-from-Home (WFH) arrangements as originally stipulated under FIRB Resolution No. 19-21.¹ The issuance, signed in August 2021, has authorized the continuous adoption by PEZA-registered IT-BPM firms of WFH alternative schemes for up to 90% of their workforce without losing their incentives until March 31, 2022.

Prior to FIRB's denial of the petition on the WFH deadline extension, the agency likewise disapproved through Resolution No. 23-21², dated October 15, 2021, the request of PEZA and its enterprises to be exempted from the WFH arrangement under Resolution No. 19-21, which required a threshold of 90% for employees working remotely.

The CREATE Law: Geographical Boundaries

When Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE) was signed into law on March 26, 2021, its mandate covering the geographical boundaries for the operations of qualified registered projects or activities was clear and specific. Section 309 of the law states that *"qualified registered project or activity under an Investment Promotion Agency administering an economic zone or freeport shall be exclusively conducted or operated within the geographical boundaries of the zone or freeport being administered by the Investment Promotion Agency in which the project or activity is registered."*

The CREATE law further dictates that any project or activity conducted outside the geographical boundaries of the zone or freeport shall not be entitled

to the incentives provided therein, unless such is operated under another IPA. Simply put, to become eligible for the perks of the law rationalizing the grant of incentives, registered business enterprises should locate physically – and stay – within the legitimate domains of their registering IPAs.

"CHAPTER VI

"TRANSITORY AND MISCELLANEOUS PROVISIONS

"SEC. 309. *Prohibition on Registered Activities.* – A qualified registered project or activity under an Investment Promotion Agency administering an economic zone or freeport shall be exclusively conducted or operated within the geographical boundaries of the zone or freeport being administered by the Investment Promotion Agency in which the project or activity is registered: *Provided,* That a registered business enterprise may conduct or operate more than one qualified registered project or activity within the same zone or freeport under the same Investment Promotion Agency: *Provided, further,* That any project or activity conducted or performed outside the geographical boundaries of the zone or freeport shall not be entitled to the incentives provided in this Act, unless such project or activity is conducted or operated under another Investment Promotion Agency."

The CREATE Law and the COVID-19 Pandemic

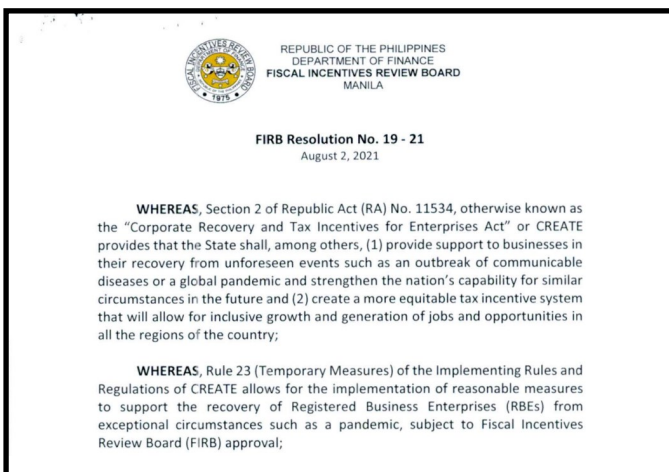
Although the CREATE law was enacted in the midst of great uncertainties arising from the adverse economic implications of the Covid-19 pandemic, it is actually the culmination of almost three decades of initiative to restructure and modernize the fiscal incentives system in the country. However, the onset of the Covid-19 health crisis early in 2020 has prompted the framers of the law to recalibrate its context and intent, making it more relevant by refocusing its coverage and beneficial impact not just to enterprises registered with IPAs and other incentives administering entities but to the entire business sector especially the micro, small and medium enterprises (MSMEs).

Thus, while the law was crafted to (a) *improve the equity and efficiency of the corporate tax system by lowering the rate, widening the tax base, and reducing tax distortions and leakages; and (b) develop a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent;* it was also designed to *provide support to businesses in their recovery from unforeseen events such as an outbreak of communicable diseases or a global pandemic and strengthen the nation's capability for similar circumstances in the fu-*

ture.

The surge of the Covid-19 pandemic in the country in early 2020 has inflicted unprecedented and considerable damage to the business sector and the economy. Among those extremely affected is the IT-BPM sector, which, as affirmed by the Department of Labor and Employment, is one of the key employment generators in the country. Regarded as one of the leaders in the global IT-BPM industry, the local sector ranks 1st in voice-related services and accounts for 13% of global market share.

In terms of revenue, the IT-BPM industry in the Philippines generated an estimated revenue amounting to 26.2 billion U.S. dollars in 2020, reflecting a decrease of 0.5 percent from the previous year. The decrease in revenue can be attributed to the disruptions in operations as a result of the global Covid-19 pandemic. The industry was forecast to recover in the next two years, with revenues reaching approximately 29.1 billion in 2022.³



Work-from-Home Scheme: Workers' Refuge from the Pandemic

Realizing the adverse effect of the Covid-19 pandemic to business enterprises, and particularly considering the risks and hazards for the employees when travelling to workplace or reporting onsite, the FIRB issued on August 2, 2021 Resolution No. 19-21. The issuance has allowed the IT-BPM sector to continue implementing WFH arrangements for up to 90% of their employees without adversely affecting or losing their fiscal incentives under CREATE but only until March 31, 2022. As cited, the bases for the resolution are: 1) Section 2 (Declaration of Policy) of the CREATE law; 2) Rule 23 (Temporary Measures for Exceptional Circumstances) of the IRR of CREATE; 3) RA 11165 or the Telecommuting Act of 2018; and 4) the adoption by the IATF of WFH as an alternative work arrangement in its community quarantine protocols.

The PEZA has earlier proposed to the FIRB the approval of a policy that will allow its registered IT-BPM enterprises to operate under a WFH arrangement of up to 100% – instead of 90% – onsite capacity until September 12, 2022, without diminution of fiscal incentives. The PEZA proposal was in support to

the clamor of the IT Business Process Association of the Philippines (IBPAB) for another extension to allow members a longer runway to transition their operations.

According to IBPAB president Jack Madrid, the WFH setup has been beneficial to the industry to perform remarkably even amid the Covid-19 pandemic. For his part, Contact Center Association of the Philippines president Jojo Uligan, said that 65 to 70 percent of its member contact centers have been under the WFH arrangement since 2020 to make sure business operations continue while making sure employees are safe. He maintained that clients were asking for WFH scheme to be sustained based on the fact that they have proven that it works in improving productivity and talent retention.⁴

Working from home has helped the industry thrive despite several lockdowns, creating 23,000 new jobs in 2020, just when the crisis pushed the country's unemployment rate to its peak in 15 years. Its workforce grew further by 8 percent in 2021, adding about 100,000 new jobs, while revenues went up last year by around 12 percent to a total of \$28.8 billion, according to IBPAP data. By the end of last year, said data shows that around 60 percent of the industry worked from home.⁵

But the FIRB, through Memorandum Circular 2022-018, has denied the appeal of the PEZA and the IT-BPM sector for the proposed extension and thus, upheld the provisions of its previous Resolution No. 19-21. The agency said that the decision was in sync with the government's strategy to safely reopen the economy and stimulate business revival in the country.

Finance Secretary and FIRB Chairperson Carlos Dominguez III stated that the WFH arrangement is only a time-bound temporary measure adopted during the surge of the Covid-19 pandemic. He stressed that given the increasing vaccination rate of Filipinos nationwide, the government can now undertake safe measures for physical reporting of employees, including those working in the IT-BPM firms operating within ecozones and freeports. Furthermore, he cited that the employees' return to the office would provide more opportunities and pave the way for the recovery of local MSMEs that depend on IT-BPM employees for their livelihood.

Report Onsite or Lose Incentives

The Department of Finance (DOF) has clarified that IT-BPM firms in ecozones that are registered with IPAs are free to adopt WFH arrangements. Finance Secretary Dominguez even emphasized that it is not impinging on the companies' management prerogative to continue implementing their WFH setups. He warned, however, that the companies must give up the tax incentives they currently enjoy based on the mandates of the law.⁶

Firms registered with an IPA such as the PEZA

enjoy incentives granted through the CREATE law such as income tax holiday, special corporate income tax, enhanced deductions, duty exemption on importation of capital equipment, raw materials, spare parts, or accessories, and VAT exemption on importation and zero-rating on local purchases.

Based on FIRB Resolution Nos. 19-21 and 23-21, non-compliance with the conditions prescribed therein will result in the suspension of the income tax incentives on the revenue corresponding to the months of noncompliance. Recently, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 39-2022 prescribing the manner of payment of penalties relative to violations incurred by RBEs under the IT-BPM Sector on the conditions prescribed regarding WFH arrangement. The RMC requires RBEs to compute the penalty in the manner illustrated in the circular, and pay the penalty within 30 days after the due date prescribed for the payment of income tax. If the deadline is missed, administrative penalties will be imposed as if the RBE were paying the regular corporate income tax rate of 20% or 25%.⁷

PEZA: Hybrid Work Scheme

On April 8, 2022, PEZA announced that registered business enterprises and IT-BPM companies may practice hybrid work set-up until Sept. 12, 2022 – the declared end of the state of the COVID-19 calamity by President Rodrigo Duterte.⁸ As directed, PEZA-registered IT-BPMs and other registered business enterprises that are unable to immediately return to office may request a letter of authority from the agency to allow 70-percent of their workforce to work on site and 30 percent to work from home.

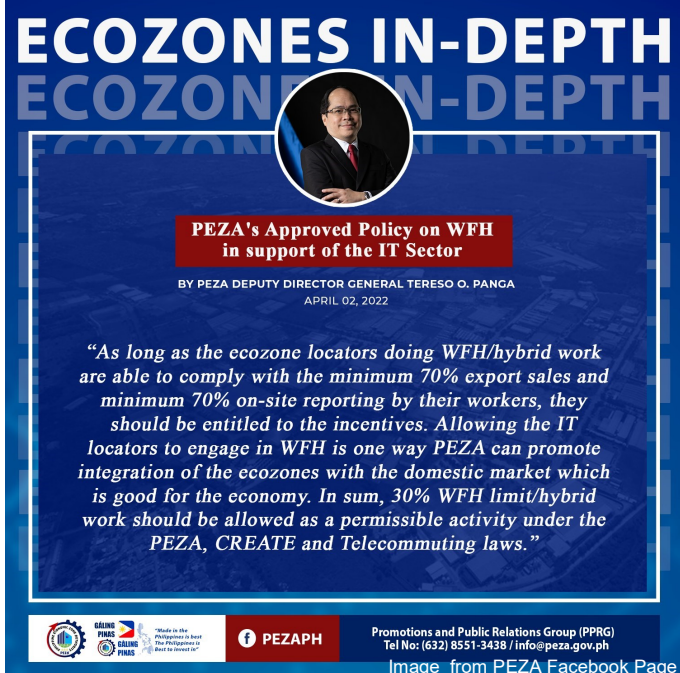
According to Director General Plaza, PEZA, is just restoring back to the regular ratio of not more than 30% domestic sales allowance and WFH work ratio. She maintained that PEZA's work from home scheme for registered IT-BPOs and RBEs has been conceptualized even before the passage of Republic Act No. 11165, or the Telecommuting Act on December 20, 2018. For his part, PEZA Deputy Director-General for Policy and Planning Tereso Panga said the provisions of the CREATE law do not prohibit PEZA-registered RBEs and IT-BPM companies from conducting remote work or performing a portion of their activity outside the economic zones.

He affirmed that as long as ecozone locators doing hybrid work are complying with the minimum 70-percent export sales and minimum 70-percent on-site report by their workers, they are entitled to enjoy the tax incentives. He added that the 30-percent WFH setup is a permissible activity under PEZA, CREATE, and Telecommuting laws.

This PEZA issuance, however, does not conform with the provisions of the CREATE law particularly Section 309, which explicitly requires qualified registered project or activity under an IPA – such as PEZA – to be exclusively conducted or operated with-

in the geographical boundaries of the zone or freeport being administered by said IPA wherein the activity is registered. Otherwise, the law states that a violation of such requirement would result to ineligibility or non-entitlement of the business enterprise to avail of the incentives as prescribed under the law.

DTI Secretary Ramon Lopez agrees that a hybrid work setup, which allows workers to spend only part of the workweek in the office, is not allowed under the CREATE law. He suggests that if PEZA-registered companies intend to adopt a hybrid WFH arrangement, especially if justified by the nature of their operations, e.g. service-exports, the same can only be adopted by revising the PEZA and CREATE laws.



ECOZONES IN-DEPTH

PEZA's Approved Policy on WFH in support of the IT Sector

BY PEZA DEPUTY DIRECTOR GENERAL TERESO O. PANGA
APRIL 02, 2022

"As long as the ecozone locators doing WFH/hybrid work are able to comply with the minimum 70% export sales and minimum 70% on-site reporting by their workers, they should be entitled to the incentives. Allowing the IT locators to engage in WFH is one way PEZA can promote integration of the ecozones with the domestic market which is good for the economy. In sum, 30% WFH limit/hybrid work should be allowed as a permissible activity under the PEZA, CREATE and Telecommuting laws."

PEZAPH Promotions and Public Relations Group (PPRG)
Tel No: (632) 8551-3438 / info@peza.gov.ph

Image from PEZA Facebook Page

Exodus from PEZA?

Even before the "return to office" directive by PEZA and its rejection of the IT-BPM sector's request for extension of WFH set-up, firms were reportedly beginning to move away from PEZA-administered ecozones and consider either registering with the Board of Investments (BOI) or have their companies listed as normal corporations in exchange for the retention of their remote working arrangement for their employees.⁹

Concentrix Senior Vice President and Country Manager Amit Jagga declared that their company has decided to let go of its fiscal incentives to keep the benefits of hybrid work. According to him, over a million BPO workers currently contribute to the economy under the hybrid model. He lamented that most of their sites are with PEZA and while they are willing to operate back onsite as ordered, their workers really want to continue working from home.

DOF Assistant Secretary Paola Alvarez confirmed that there are other locators that are now de-registering from PEZA and registering as normal cor-

porations and in turn opting for the regular corporate income tax. But she stressed that not all locators of PEZA and IPAs are against the government's order and are actually willingly going back to the ecozones.

The Alliance of Call Center Workers (ACW) has earlier revealed in its survey regarding their response to the FIRB decision that 157 of their members are mulling resignation from their jobs if the work-from-home (WFH) or work-from-anywhere (WFX) scheme will no longer be allowed, 117 are undecided, and 37 members indicated that they will stay in their work even if they have to go back to their offices.

Addressing the Dilemma

The most contentious issue surrounding this proposed hybrid work scheme for IPA-registered IT-BPM firms is the contrasting contexts of R.A. 11534 or the CREATE law and R.A. 11165 or the Telecommuting Act. While the CREATE law mandates the exclusive operation of registered activities within the geographical boundaries of the registering IPA, the Telecommuting Act otherwise encourages the adoption of a “alternative work avenues” by the private sector for its employees, which include telecommuting and other work arrangements.

As crafted, CREATE is explicit in its mandate to restrict the performance of registered firms within the domains of concerned IPAs simply for equity and fairness among registered and non-registered activities. Regular companies including micro, medium and small enterprises (MSMEs) are not restricted to operate within a territory but pay the regular corporate and other taxes. On the other hand, IPA-registered companies enjoy a set of generous incentives in exchange for their compliance with regulatory rules including the conduct of operations within their respec-

tive zones.

Until this issue of whether to allow IPA-registered IT-BPM companies to continuously adopt a hybrid work arrangement – considering the CREATE law, the Telecommuting Act, and the Covid-19 situation in the country – is resolved at the level of the FIRB as the grand administrator of investment incentives, this sector would remain in a dilemma – whether to return to work onsite or continue to work remotely but give up their tax privileges. Otherwise, if the clamor for a remote work set-up persists amidst a sustained policy support for full onsite operations, the courts or even Congress may have to intervene and settle the matter not only for the interest of the IT-BPM industry but of the entire Filipino people.

Footnotes:

- 1 FIRB Resolution No. 19-21, <https://firb.gov.ph/download/firb-resolution-19-21-wfh-arrangement-it-bpm/?wpdmdl=2192&refresh=625d005cc94e61650262108>
- 2 FIRB Resolution No. 23-21, <https://firb.gov.ph/download/firb-resolution-no-23-21-denying-the-request-of-peza-and-its-enterprises-to-be-exempted-from-wfh-arrangement-under-firb-19-21/?wpdmdl=2378&refresh=625cfae59b7b1650261934>
- 3 IT-BPM industry revenue Philippines 2016-2022, Published by [Statista Research Department](https://www.statista.com/statistics/1238625/philippines-it-bpm-revenue/), Jul 9, 2021 <https://www.statista.com/statistics/1238625/philippines-it-bpm-revenue/>
- 4 Katlene O. Cacho, Sunstar, 25 February 2022, IT-BPM players await approval of WFH extension <https://ph.news.yahoo.com/bpm-players-await-approval-wfh>
- 5 <https://business.inquirer.net/344622/peza-yields-urges-bpo-staff-to-work-onsite>
- 6 <https://www.pna.gov.ph/articles/1170402>
- 7 Othel V. Campos, PEZA allows locators to extend hybrid work setup until Sept. 12, Manila Standard, April 8, 2022, 8:00 pm in Biz Plus, Business, <https://www.bworldonline.com/economy/2022/04/11/441820/wfh-or-incentives-the-it-bpm-dilemma/>
- 8 <https://manilastandard.net/business/314220346/peza-allows-locators-to-extend-hybrid-work-setup-until-sept-12.html>
- 9 <https://www.yugatech.com/news/bpos-move-away-from-ecozones-to-keep-wfh-for-workers/>



Tax Remedies of the Government under the National Internal Revenue Code

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To maintain the equilibrium between the interest of the government and the taxpayer, tax remedies are defined in Title VIII of the National Internal Revenue Code of the Philippines, as amended (NIRC). This shall be the first of a two-part article series.

The power to levy taxes is one of the government's inherent powers. As the famous dictum goes – *taxes are the lifeblood of the government and should be collected without necessary hindrance*. It is indubitable that taxes are essential to ensure the continuous

operations of the government, and to finance the essential projects designed to fuel economic growth and ensure the welfare of its citizens.

In the Philippines, taxes to be paid are determined by self-assessment. It means taxpayers themselves calculate or determine their own tax liabilities. The taxpayer subsequently files a tax return together

**Through the supervision of Dir. Clinton S. Martinez and Atty. Sherry Anne Calulo-Salazar*

with payment for the tax liabilities so calculated on or before the due date.¹ However, things do not always go smoothly for either the State or the taxpayer. This is where the law steps in to offer remedies to assist the complaining party.

Tax remedies are procedures, which may be availed by either the state or the taxpayer as a means to obtain the relief desired when there are perceived lapses or error in the assessment, collection and payment of taxes. For the government, remedies are courses of action provided by law to implement the tax laws or enforce tax collection and this power is given to the Bureau of Internal Revenue (BIR) (NIRC, Section 2, Title I). As such, the BIR can conduct a tax audit or investigation on all taxpayers.

A tax assessment is a finding that the taxpayer has not paid the correct taxes after a tax audit. It is also a written notice (Assessment Notice) to the taxpayer wherein the amount stated therein should be paid. In general, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law. And, if the case is filed beyond the prescribed period required by law, the three-year period shall be counted from the filing of the return.²

Judicial remedies are provided by law to enable the BIR strengthen tax collection, which is commenced through a tax audit or investigation. Below are the judicial processes exercised by the government:

1. Tax Audit or Investigation;
2. Issuance of Preliminary Assessment Notice (PAN);
3. Issuance of Formal Letter of Demand / Final Assessment Notice (FAN);
4. Denial of Protest;
5. Denial of Appeal by Court of Tax Appeals (CTA) Division;
6. Denial of Appeal by CTA En Banc;
7. Denial of Appeal by Supreme Court (SC) Division; and
8. Denial of Appeal by SC En Banc.³

Aside from judicial remedies, civil remedies are also available for the collection of delinquent taxes. Section 205 of the NIRC provides the following civil remedies:

1. Distraint of goods, chattels or effects and other personal property of whatever character; and
2. Civil or criminal action.

Distraint means enforcing the payment of taxes by seizure of tangible or intangible personal property by the government. The delinquent taxpayer's property may be seized through actual distraint or constructive distraint.

Constructive distraint can be effected by requiring the taxpayer or any person having possession or control of the property to sign a receipt covering the property distrainted and obliging him/her to preserve

the property without any alteration.⁴ This means that the property cannot be disposed in any manner without the express authority of the Commissioner (Section 206, NIRC).

Meanwhile, actual distraint of personal property has limits of authority. The rule states that if the amount involved is in excess of P1,000,000, only the Commissioner of Internal Revenue (CIR) or his duly authorized representative may seize the personal property. If the amount is P1,000,000 or less, the Revenue District Officer (RDO) may seize and distraint the personal property. However, only the CIR or his duly authorized representative may lift an order to distraint (Section 207[a], NIRC).⁵

Another summary remedy provided by the NIRC is levy on real property (Section 207[b]). The law states that real property may be levied upon, before, simultaneously or after the distraint of personal property belonging to the delinquent. Consequently, any internal revenue officer designated by the CIR or his duly authorized representative shall prepare a duly authenticated certificate showing the name of the taxpayer and the amounts of tax and penalty due from him.⁶

It must be noted that before the government can exercise distraint or levy, the following requisites should be met:

1. The taxpayer must be delinquent (except for constructive distraint);
2. There must be subsequent demand for payment (assessment);
3. Taxpayer fails to pay at the time required; and
4. Period to collect or assess tax has not yet prescribed.

After determining if the delinquent taxpayer shall be penalized through distraint or levy, the BIR shall follow these procedures:⁷

1. Commencement of the proceeding;
2. Issuance of warrant;
3. Posting of public auction notices;
4. Public auction sale.

The sale and the release of distrainted property must then be reported to the BIR (Sections 210 and 211, NIRC). Moreover, the distrainted property may also be purchased by the national government through the CIR or his deputy (Section 212, NIRC).

These remedies are put in place to strengthen the government's tax collection efforts within the bounds of rules and regulations. This is to ensure that taxpayers are paying the correct taxes, and that no one is evading their responsibility to the prejudice of the government and of the people.

Footnotes:

1 TRJ 2009 Vol XXI No 6-a: Backgrounder on the Methods of

Assessments Adopted by the ASEAN Countries for Tax Purposes, November - December 2009. Retrieved from: https://serp-p.pids.gov.ph/publication_detail?id=4912#:~:text=The%20self%2Dassessment%20is%20a,or%20before%20the%20due%20date.

- 2 Section 203 of the NIRC.
- 3 Section 228, NIRC; Revenue Regulations (RR) No. 12-1985; RR No. 12-1999 as amended by RR No. 18-2013 and clarified

by Revenue Memorandum Circular No. 11-2014.

- 4 Dascil, Rodelio (2020). NIRC of the Philippines As amended: Annotated 6th Edition p. 479.
- 5 Id. p. 482.
- 6 Id.
- 7 Sections 208 & 209 of the NIRC.



Estate Tax Amnesty

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According to Benjamin Franklin, only two things are certain in life, and these are death and taxes. But isn't it ironic that these two can happen to a person simultaneously? Upon the death of a person, his or her possessions can be taxed through the imposition of an estate tax. So even if you are already dead, you cannot escape paying taxes.

The Bureau of Internal Revenue (BIR) defines estate tax as "a tax on the right of the deceased person to transmit his/her estate to his/her lawful heirs and beneficiaries at the time of death and on certain transfers, which are made by law as equivalent to testamentary disposition. It is also not a tax on property, but a tax imposed on the privilege of transmitting

property upon the death of the owner. The estate tax is also based on the laws in force at the time of death notwithstanding the postponement of the actual possession or enjoyment of the estate by the beneficiary." Hence, it can incur penalties if not paid on time.

But why is it difficult to pay estate tax in the Philippines before? Prior to the Tax Reform for Acceleration and Inclusion (TRAIN) law or Republic Act (RA) No. 10963, the estate tax was based on a graduated schedule, as follows:

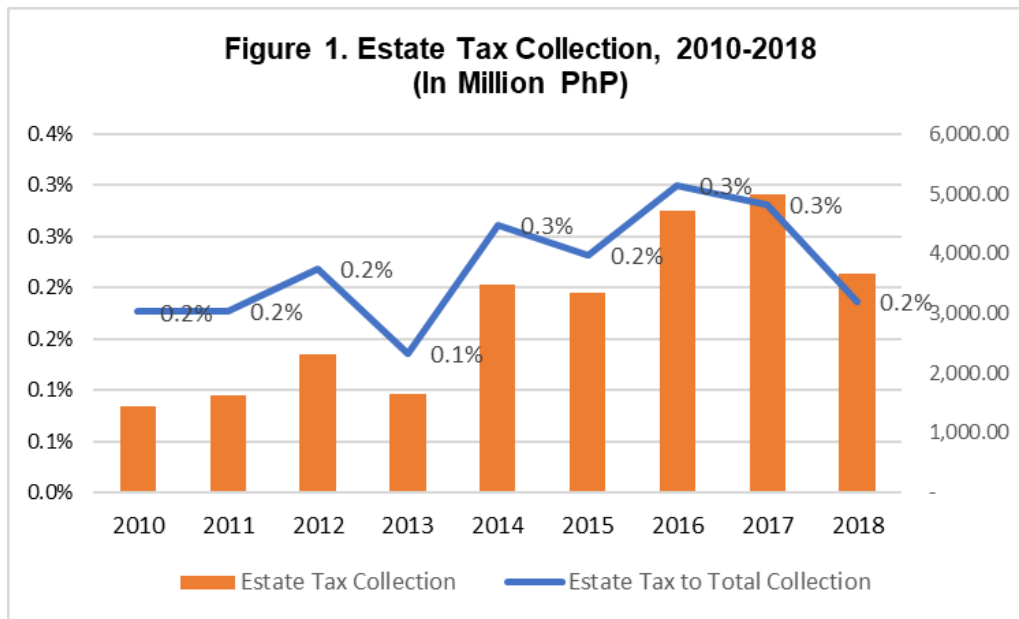
If the net estate is:

Over	But not Over	The tax shall be	Plus	Of the excess over
	P 200,000	Exempt		
P 200,000	550,000	0	5%	P 200,000
500,000	2,000,000	P 15,000	8%	500,000
2,000,000	5,000,000	135,000	11%	2,000,000
5,000,000	10,000,000	465,000	15%	5,000,000
10,000,000	And Over	1,215,000	20%	10,000,000

Source: RA 8424 which was enforced from 1998 to 2017.

It can be gleaned from the above graduated schedule that estate tax rate under RA 8424 ranged from 5% to 20% which was too high compared to the flat rate of 6% under the TRAIN law. Moreover, upon the death of the decedent, the heirs usually incur huge medical and/or burial expenses which may affect the transfer of properties and other possessions of the decedent to his or her heirs, including the payment of the estate tax, except maybe for rich Filipino families. Lastly, it is also time-consuming to settle an estate tax in the Philippines. All heirs should agree in the partition of the estate of the decedent if there is no

last will and testament. Sometimes, not all heirs come in agreement. Preparation of the required documents for the payment of estate tax may also take some time since most Filipinos have family members or relatives living in provinces and/or working overseas. These factors aggravated the settlement of estate tax in the country. The data below shows that the government did not get much from estate tax which only averaged 0.2% to total tax collection. It even decreased from PhP5 billion in 2017 to PhP3.7 billion in 2018 which was the impact of the lowering of the estate tax rate to a flat rate of 6% under the TRAIN law.



Source of basic data: Bureau of Internal Revenue .

In this regard, the current administration granted an amnesty on estate tax and delinquencies in 2019 under RA 11213 which was estimated to generate PhP27.54 billion in revenues. This limited-time offer of the government gives taxpayers an opportunity to settle previously unpaid taxes, without interest and penalties as well as freedom from legal prosecution. However, the estimated potential revenue from the amnesty was not realized. As of May 2021, the BIR only collected PhP10.61 billion from the tax amnesty or just 38.5% of the estimated potential revenue due to the pandemic and some implementation bottlenecks.

Last June 30, 2021, President Rodrigo Duterte signed RA 11569 to extend the availment period of the estate tax amnesty until June 30, 2023. It amended RA 11213 since the deadline of availment already lapsed. Aside from the two-year extension period, the proof of settlement of the estate whether judicial or extra-judicial is no longer required. Thus, RA 11569 made the tax amnesty availment a lot easier.

The estate tax amnesty program under RA 11213 allows heirs with unpaid estate taxes to settle at the rate of 6 percent without penalties. Aside from the non-imposition of penalties, those who avail of the amnesty would enjoy immunity from civil, criminal and administrative cases. The amnesty also covers "undeclared estates" or properties that were not included in previously filed estate tax returns and were not subjected to estate taxes. The 6-percent amnesty tax rate is imposed on the net estate of the decedent which can be determined by subtracting some allowable deductions against the value of the gross estate of the decedent at the time of death.

The period of availment was extended for another two years to give ample time for taxpayers to recoup their resources who were mostly affected by the COVID-19 pandemic. Possible sources of income were affected by the pandemic and thus, many face difficulty paying their tax obligations or even avail of

the tax amnesty. The extension of two years would give them another chance to settle their estate tax delinquency. The required proof of settlement of estate, whether judicial or extra-judicial, was also lifted to expedite the processing of the availment of estate tax amnesty. This is cited as the main reason why there are less availers even if the tax rate was lowered to 6%.

To avail of the estate tax amnesty, per Section 2 of BIR RR 17-2021, the duly accomplished and sworn Estate Tax Amnesty Return (ETAR) together with Acceptance Payment Form (APF) and other requirements as enumerated in the ETAR, shall be submitted to the Revenue District Office (RDO) having the jurisdiction over the last resident of the decedent. In case of a non-resident decedent, ETAR shall be filed in RDO No. 39-South, Quezon City. Within five (5) working days, the concerned RDO will endorse the APF for payment of the estate amnesty tax to the Authorized Agent Banks (AABs) or Revenue Collection Officers (RCOs). Upon payment, ETAR and other documents attached to it, APF and proof of payment shall be submitted to the concerned RDO until June 14, 2023. Then, after 15 days, the concerned RDO will issue the Certificate of Availment of the Estate Tax Amnesty.

Sample computation

Based on BIR RR Nos. 6-2019 and 17-2021, estate tax can be computed, as follows:

For instance, Jose's father died on January 1, 2016. Their family home has a fair market value of PhP2,500,000.00 at the time of his father's death. Assuming that the FMV of the family home is higher than the zonal value. No more other personal or real properties under his father's name. How much would be the estate tax due under the tax amnesty program?

Case No. 1

2,500,000.00	Gross estate of the decedent
1,000,000.00	(Less) standard deduction
1,000,000.00	(Less) family home
500,000.00	Net estate
6%	(multiply) 6% estate tax rate
30,000.00	Estate tax due

But what if the FMV of the family home is only PhP2 million? How much would be the estate tax due?

Case No. 2

2,000,000.00	Gross estate of the decedent
1,000,000.00	(Less) standard deduction
1,000,000.00	(Less) family home
0.00	Net estate
6%	(multiply) 6% estate tax rate
5,000.00	Estate tax due

The estate tax due is not zero but PhP5,000.00 since the minimum estate amnesty tax for transfer of the estate of each decedent is PhP5,000.00 per RA 11213.

Note that allowable deductions such as standard deduction of PhP1 million and family home equivalent to another PhP1 million were deducted from the gross estate of the decedent. Other deductible expense such as funeral and medical expenses can also be included if receipts are provided.

As of August, 2021, the BIR had collected a total of PhP 5.24 billion from the estate tax amnesty (Table 1).

Table 1. Monthly Estate Tax Collection, 2019 - 2021 (in Million PhP)

Month	2019	2020	2021	Total
January		64.53	169.89	234.42
February		47.16	139.03	186.19
March		40.94	187.18	228.12
April		3.2	159.11	162.31
May		490.37	245.96	736.33
June	23.46	19.09	1,976.34	2,018.89
July	147.84	25.59	129.54	302.97
August	117.4	22.31	164.17	303.88
September	144.8	87.52		232.32
October	161.72	134.01		295.73
November	139.02	98.94		237.96
December	149.64	148.24		297.88
TOTAL	883.88	1,181.90	3,171.22	5,237.00

**Still awaiting updated data from BIR.*

However, it is expected that proceeds from the estate tax amnesty will grow before its deadline in June 2023 as the requirement for extra judicial settlement of heirs has been lifted in the amended law. Aside from the difficulty of the heirs to settle the partition of the decedents' property or properties with the time allotted during the first tax amnesty law, the pandemic situation aggravated the processing of documents as government offices were either on lockdown or working under a skeletal arrangement. But with the opening of the economy this time around, the BIR is looking forward for more availers of the estate tax amnesty before the June 14, 2023 deadline.

Taxpayers should grab this one-time opportunity to settle their estate tax delinquency. After the deadline, computation of the estate tax will include all penalties which will be more difficult to pay. Note that the grant of a tax amnesty comes once in a lifetime. It is not always offered by the government since it affects compliance of taxpayers who are religiously paying their taxes.



Excise Taxes on Petroleum and Legislative Remedies

Elsie T. Jesalva
SLSO II, Indirect Taxes Branch

The invasion of Ukraine by Russia late February of this year has drove up oil prices higher, affecting countries like the Philippines that import majority of its fuel requirements. But the recent strict lockdown in China has resulted to crude prices falling below US\$100/barrel threshold. In comparison to its

Southeast Asian neighbors, the Philippines, being a heavy importer of oil, is more vulnerable to price hikes. As explained by President Duterte: *“Ang Indonesia, may reserve. Malaysia, may reserve. Tayo, wala. So every time magbili tayong gasolina, we use our savings.”*¹

It is unfortunate that oil prices in the Philippines rose when the economy was reopening after months of community quarantine restrictions due to the coronavirus outbreak.

With the Russia-Ukraine crisis driving up oil prices and everyone calling for the suspension of the excise taxes on fuel products, the Department of Finance (DOF) refuses to acknowledge the urgent need to suspend these taxes.

EXCISE TAX ON PETROLEUM PRODUCTS UNDER THE TRAIN LAW

Republic Act (RA) 10963, also known as the 2018 Tax Reform for Acceleration and Inclusion (TRAIN) Law, provided for new lower income tax rates for individuals while also imposing new excise taxes on diesel, liquefied petroleum gas, kerosene, and bunker fuel, with the new excise taxes being widely perceived as the leading cause of the country's worsening economic condition.

Petroleum Products	Old Tax Rates (per liter/kg)	New Tax Rates (per liter/kg)		
		2018	2019	2020
Lubricating oils and greases	P 4.50	P 8.00	P 9.00	P 10.00
Processed gas	P 0.05	P 8.00	P 9.00	P 10.00
Waxes and petrolatum	P 3.50	P 8.00	P 9.00	P 10.00
Denatured alcohol used for motive power	P 0.05	P 8.00	P 9.00	P 10.00
Naphtha and regular gasoline	P 4.35	P 7.00	P 9.00	P 10.00
Leaded gasoline ²	P 5.35	N/A	N/A	N/A
Unleaded gasoline	P 4.35	P 7.00	P 9.00	P 10.00
Aviation turbo jet fuel	P 3.67	P 4.00	P 4.00	P 4.00
Kerosene ³	P 0.00	P 3.00	P 4.00	P 5.00
Diesel fuel oil	P 0.00	P 2.50	P 4.50	P 6.00
Liquefied petroleum gas (LPG) ⁴	P 0.00	P 1.00	P 2.00	P 3.00
Asphalts	P 0.56	P 8.00	P 9.00	P 10.00
Bunker fuel oil	P 0.00	P 2.50	P 4.50	P 6.00
Petroleum coke ⁵	N/A	P 2.50	P 4.50	P 6.00

Revenue Regulations (RR) No. 2-2018 issued on 24 January 2018, which implements the excise tax provision on fuel under the TRAIN Law, imposes an excise tax of P7.00 per liter effective Jan. 1, 2018, and will be increased to P9.00 on Jan. 1, 2019, and P10.00 in 2020. The excise tax on diesel, on the other hand, is P2.50 for 2018, and will be increased to P4.50 in 2019, and P6.00 in 2020.

Under RR 2-2018, the scheduled increase in the excise tax on fuel shall be suspended when the average price of "Dubai crude oil" reaches or exceeds US\$80.00 per barrel for three (3) months prior to the scheduled increase of the month.

Note that RR 2-2018 requires the crude oil price to stay at US\$80 per barrel for 3 months prior to the scheduled increase of the month.

PRO-POOR OR PRO-RICH

As a matter of principle, the DOF firmly opposes any proposal that aims to suspend fuel excise taxes since it would result in major revenue losses, will be detrimental to our recovery, and is inequitable.

According to Finance Secretary Carlos Dominguez, the proposal's negative impact on growth and economic recovery will be lasting and more substantial than its transitory, and considerably lesser impact on total inflation, from a cost-benefit aspect.

Speaking to CNN Philippines' *The Final Word*, DOF Assistant Secretary Paola Alvarez mentioned that suspending fuel excise taxes is disadvantageous for the bottom 50% of Filipino households - since they only consume 13.9% of the fuel supply compared to the top 10% of households, as they are expected to spend 48.8% of the country's total fuel consumption this year.

She also added that, "It will also only slow down economic recovery because it will only temporarily lower the prices of goods by 0.03 percentage points this year, but the idealized government spending from the foregone revenues will hamper our economic growth." ⁶

This means that with the suspension of fuel excise taxes, higher-income families will benefit more than lower-income households.

DISPOSITION OF EXCISE TAX COLLECTIONS ON PETROLEUM

Despite rising oil prices, the DOF and the National Economic and Development Authority (NEDA) strongly opposed the proposal to suspend the excise tax on petroleum products.

Secretary Dominguez warned that reduced revenues would have an impact on public programs and projects, such as large-scale infrastructure projects funded under the "Build, Build, Build" program, as well as salaries of teachers and uniformed personnel – as tax collections were programmed to fund these budgetary requirements.

He added that if excise tax on petroleum products be suspended, the government will lose P131.4 billion in income, including P24.7 billion in excise and P106.7 billion in incremental revenues under the TRAIN Law.⁷ He also mentioned that these are much-needed revenues that they recommend to be used as a funding source to support and provide subsidies to the most vulnerable sectors; without these, the government will be forced to borrow more to finance government programs.

ECONOMIC DEVELOPMENT CLUSTER RECOMMENDATIONS

The Economic Development Cluster (EDC) of the Duterte Cabinet, which Secretary Dominguez leads, has recommended that cash awards be distributed to the bottom 50 percent of all Filipino households, benefiting about 12.4 million families or 74.7 million Filipinos.

Secretary Dominguez explained that beneficiaries will be drawn from the Department of Social Welfare and Development's (DSWD) most recent list and will be identical to the unconditional cash transfers (UCTs) provided under the TRAIN Law. He added that the budget for UCTs will be P33.1 billion, based on a projected P200-per-month or P2,400-per-year payment to each qualified household.

He understood that the P200 monthly subsidy would not be enough to cushion the impact of fuel price hikes on low-income households, but that it is all the government can afford at this time. The Finance Secretary said that the funds for the targeted subsidies would be sourced from VAT collections on oil imports.

In order to mitigate the impact of the oil price hike on over 377,000 qualified public utility vehicle (PUV) drivers in the transportation sector, the EDC also recommends that the Transportation Department's fuel voucher program budget be increased from the current P2.5 billion approved by the President to P5 billion.

He also recommended increasing the budget from P500 million to P1.1 billion to provide extra fuel vouchers for farmers and fisherfolk to help mitigate the impact of higher fuel prices on production and

transport costs of farm and fishery products.

The first tranche of this amounts was distributed in March, followed by the second tranche this April.

NO LEGAL IMPEDIMENT

As early as May of 2018, the DOF made the announcement that an immediate suspension of the 2018 excise taxes on fuel may not be possible under the Train Law. As pointed out by then Finance Undersecretary turned NEDA Secretary Karl Kendrick T. Chua, "while Section 43 of the TRAIN law provides a mechanism to suspend scheduled increases, it also states that the existing excise tax at the time of the suspension cannot be reduced."⁸

Senate Minority Leader Franklin Drilon, a former Justice Secretary, said the DOF and the Bureau of Internal Revenue (BIR) have the authority under the TRAIN Law to suspend the collection of fuel excise taxes in order to mitigate the impact of price hikes on petroleum products.⁹ He further said that if the Executive (department), specifically the DOF and the BIR, truly want to mitigate the impact of high oil prices on the cost of goods and living expenses of ordinary Filipinos, there is nothing stopping them from suspending the collection of excise taxes on petroleum products.

Senator Drilon emphasized that the language of the TRAIN law should be interpreted liberally, not just in terms of deferring excise tax hikes, but also in terms of their application. He explained that Filipinos are in an extraordinary situation that necessitates a broad interpretation of the law as well as compassion. He pointed out that the TRAIN law is not intended to bind the government's hands and prevent them from responding to unexpected rises in oil prices that harm consumers.

He noted that while the TRAIN Law was being debated, inflation was a major concern. During the plenary discussions, he stated that it was the Senators' understanding that the excise tax would be suspended if inflation reached the top end of the Development Budget Coordination Committee (DBCC) estimate or if the world price of crude oil exceeds US\$80 per barrel.

"Our interpretation is that the DOF has the power not just to suspend the increase in excise taxes but also its imposition, whenever the price of oil per barrel exceeds US\$80. We should be mindful of the purpose in putting safeguards in the law. It was to cushion the inflationary effects of fuel prices and the untold hardships it will bring on our citizens," Senator Drilon emphasized.

The price of crude oil per barrel was only US\$60.9 to US\$73.4 when Congress enacted the TRAIN Act, and neither the administration nor Congress anticipated a crisis as severe as the Russia-Ukraine conflict. Trading reached US\$102 a barrel, the highest level in more than seven (7) years, and is likely to rise further.

Senator Drilon reiterated that the TRAIN law acknowledges that if the price of oil per barrel hits US\$80, it is detrimental for the economy and consumers. The law also acknowledges that the government has the authority to interfere to mitigate the impact on the economy and consumers. According to Senator Drilon, the DOF may also recommend the implementation or suspension of the fuel excise tax based on an annual review under the TRAIN law.

He further pointed out that if the DOF wants to suspend the collection of taxes, it can, as it has done so in the past. Senator Drilon recalled that in 2021, the BIR suspended the imposition of the 12-percent value-added tax (VAT) on exporters' purchases¹⁰ following objection from exporters, domestic suppliers and stakeholders, with the BIR clarifying that the postponement is due to the COVID-19.

FUTURE MEASURES

The call for the suspension of excise taxes on petroleum products brought about by RA 10963 by RA 10963 or TRAIN Law, is inevitable.

Following mounting calls from several groups to halt the collection of fuel excise taxes, different government officials provide recommendations/proposals to further cushion the impact of rising oil prices, giving priority to the marginalized groups.

◇ The Palace earlier called on the Congress to review the country's oil deregulation law as part of the government's medium-term response to the tensions between Ukraine and Russia, a key crude producer.

On **16 March 2022**, the House Committee on Energy filed **HBN 10823**¹¹ under **Committee Report No. (CRN) 1460**, a substitute bill that would amend RA 8479¹², or the "Downstream Oil Industry Deregulation Act of 1998".

CRN 1460 substituted House Bill 10505 and House Resolution 1651 introduced by Arroyo; HB 4550 by Deputy Speaker Vilma Santos-Recto; HB 4771, HB 10386 and HR 9 by Bayan Muna Party-list Rep. Carlos Isagani Zarate; HB 5172 by Baguio City Rep. Mark Go; HB 5186 by Deputy Speaker Rodante Marcoleta; HB 7928 by APEC Party-list Rep. Sergio Dagooc; HB 8764 by Bohol Rep. Edgar Chatto and HR 390 by Deputy Minority Leader Stella Luz Quimbo.

Pampanga Rep. Juan Miguel Macapagal Arroyo said the panel-approved bill will prevent oil companies from raising prices of old stock and require oil players to increase their minimum inventory to prevent fluctuations in local fuel prices.

He further explained that among the main reasons why the oil industry was deregulated include **stabilizing and providing reasonable prices; encouraging competition; encouraging investments; and removing cross-product subsidies.**

Under the measure, the proposed amendments¹³ to RA 8479 includes:

- Institutionalizing the minimum inventory requirements for petroleum products for purposes of supply security and unbundling the cost of petroleum, among others.
- Price monitoring system of the Department of Energy will be based on the unbundled retail price of the petroleum products.
- Granting the President of the Philippines the power to suspend or decrease fuel excise tax rates when Dubai crude oil based on Mean of Platts Singapore (MOPS) pricing reaches US\$80 per barrel.

The panel also approved a motion for the Committee on Energy to request the President of the Philippines for a special session so that the bill will be approved and enacted immediately.

The proposed amendments seek to, among others, institutionalize the minimum inventory requirements for petroleum products for purposes of supply security and unbundling the cost of petroleum.

HBN 10823 is still **currently pending in the Committee.**

The other courses of action approved by President Rodrigo Duterte to cushion the ill effects of the geopolitical conflict on sectors dependent on fuel consumption, according to Acting Presidential Spokesperson and Cabinet Secretary Karlo Nograles, are the following:¹⁴

- **Department of Energy's** recommendations to implement the P2.5-billion Pantawid Pasada program and the P500-million fuel discount program for farmers and fisherfolk;
- **Department of Trade and Industry's** recommendations to accelerate renewable energy adoption, support investments in "Utility Scale Battery Storage" to maximize the use of renewables, support investments in modern storage facilities for oil and grains, and empower the private sector to help in stockpiling;
- Building **strategic petroleum reserve infrastructure** and advocating for energy conservation and efficiency; and
- **Department of Agriculture's** recommendations to boost local food production through the Plant, Plant, Plant Program, increase rice buffer stock to not lower than 30 days, and give palay farmers much-needed financial aid, fertilizer subsidy and market access to fertilizer-producing countries.

- ◇ **Former Defense Secretary Gilbert “Gibo” Teodoro** has favored the lowering of excise tax on petroleum products rather than suspending it as an immediate help to consumers amid the rising oil prices.

In a statement¹⁵ made by the former Secretary, he recognizes that the government “has to do a difficult balancing act” as increments from tax collection, especially those in effect due to the TRAIN law, are funding social programs, such as those for economic recovery, fuel subsidy, and debt payments, among others.

Teodoro said if the government cannot afford to suspend the excise tax, it should consider looking into reducing it to address rising pump prices.

- ◇ **Socioeconomic Planning Secretary Karl Kendrick T. Chua** proposed a four-day workweek to cut the costs for businesses and workers. A similar four-day workweek was implemented in 2008 when fuel prices were also high.

“Let us try to conserve energy and one of the examples here is through the four-day workweek. Every Filipino will still have to work 40 hours per week but instead of five days, it will be four days and instead of eight hours, it will be 10 hours per day.” Sec. Chua said at the Tuesday Cabinet meeting.¹⁶

- ◇ **Labor Assistant Secretary Dominique R. Tutay** proposed a three-month wage subsidy worth P24 billion, which will benefit one million workers.

A labor group earlier filed a petition seeking for a P470 increase in the daily minimum wage of workers in the capital region, bringing it to P1,007. In relation to this Economic Planning Secretary Chua, said a P39 increase in the daily minimum wage in the National Capital Region will add one percentage point to inflation. He also added that raising jeepney fares by P1.25 will also add 0.4 percentage point to inflation since the transport groups have also filed several petitions to increase jeepney fares by as much as P6.

- ◇ **Deputy Speaker Bernadette Herrera**¹⁷ recommends the following:

- **A combination of fixes** that improves supply flows, increases local buffer stocks, removes customs fees and hauling charges, and issues purchase discount vouchers to the poor and low-income consumers, instead of reduction on excise tax on petroleum;
- **New Pantawid Pasada program** be expanded to include commuter tricycles and “last mile” freight forwarders;

Another Php2 billion to be added to the Panta-

wid Pasada, as well as the implementation of a conditional amnesty program wherein PUJ units must pass roadworthiness and anti-smoke belching checks or be exchanged for new units under the PUJ modernization program;

- A **Pantawid Kuryente program** for households consuming up to 200 kilowatt per hour (kwh) a month; and
- For long term, a **combination of wind and solar solutions, a strategic national fuel reserve, and a modified oil price stability fund**, instead of eliminating the excise tax on fuel and building and operating nuclear power plants.

PRESIDENTIAL CANDIDATES’ OPINIONS ON THE OIL CRISIS

From suspending the collection of excise taxes on petroleum products to revising the Oil Deregulation Law, presidential candidates provided a wide range of proposals to address the increasing prices of essential goods and services brought about by the Russia-Ukraine conflict.

- ◇ Vice President **Leni Robredo** called for distribution of “ayuda (cash aid)” to affected drivers, including delivery riders, hold a special session in Congress to discuss fuel taxes, service contracting for drivers, and shift to e-vehicles. She also recommended the need to find more energy sources for the Philippines, as supply from the Malampaya oil fields, which supplies all the country’s current natural gas, is seen for decommissioning between 2027 and 2029 after a projected decline in energy output starting 2024.
- ◇ Businessman **Faisal Mangondato** emphasized the need of developing the Philippine economy and strengthening connections with peace-loving countries.
- ◇ Labor leader **Leody de Guzman** wants to scrap the Ramos-era Oil Deregulation Law. He emphasized that big corporations have the upper hand in earning double the profits if fuel stays in its deregulated state. He also offered taxing the ultra-rich and go after the Marcoses’ unpaid estate taxes of about P203 billion.

Other Philippine presidential aspirants¹⁸ are looking at either cutting or suspending taxes on oil, as fuel prices rise ahead of elections in May of next year.

- ◇ Senator **Ping Lacson** called on the government to suspend excise taxes on oil and provide fuel subsidies to temporarily cushion its effects. He pointed out that there were provisions in the national budget this year that would automatically activate funds for fuel subsidies if world oil prices hit an average of US\$80 a barrel for three (3) straight months.¹⁹

- ◇ Former Senator **Ferdinand Marcos Jr.** after a

meeting with transport groups, offered to temporarily suspend the excise tax on petroleum. Previously, he wanted the collection of excise tax on fuel products to continue²⁰ and proposed the reintroduction of the Oil Price Stabilization Fund (OPSF)²¹, created during the waning years of his father Ferdinand Marcos' regime, as well as government subsidies.

- ◇ Senator **Manny Pacquiao** suggested that if the government insists on not suspending excise taxes on petroleum goods due to revenue losses, it could at least use a portion of the windfall from taxation on oil to provide people with more substantial subsidies.²²
- ◇ Manila Mayor **Isko Moreno** focused in on the Marcoses' outstanding inheritance taxes, estimated to be worth P203 billion, which he believed could offset foregone revenues from suspending fuel taxes. He also plans to cut taxes on oil and power by as much as 50%.
- ◇ Lawyer and doctor **Jose Montemayor** is in favor of suspending the excise tax on petroleum temporarily for the public's welfare.

Despite the difficult situation the nation is into, the government is optimistic²³ that Filipinos will be able to weather the storm because it has survived previous crises, such as the oil crises of 1973, 1997, 2005, and 2008, the Asian financial crisis of 1997, and the global financial crisis of 2008. The Philippines will always be resilient and as the government tries to mitigate the consequences, people must continue to move forward. With the 19th Congress coming, the Congress may proceed to review the effectiveness of the TRAIN law, keeping in mind the welfare of the people and balancing the interest of both public funding and the duty to support our most vulnerable sectors.

Footnotes:

- 1 Media Interview with President Rodrigo Roa Duterte following the oath taking of newly elected officers of Malacañang Press Corps, October 9, 2018, <https://pcoo.gov.ph/media-interview/media-interview-with-president-rodrigo-roa-duterte-following-the-oath-taking-of-newly-elected-officers-of-malacanang-press-corps/>, Accessed on 12 April 2022.
- 2 Phased out. Deleted under RA 10963
- 3 When kerosene is used as aviation fuel, it is subject to the same tax on aviation turbo jet fuel.
- 4 Under RA 10963, when LPG is used as raw material in the production of petrochemical products, the tax is zero (P0.00) per kilogram.
- 5 When petroleum coke is used as feedstock to any power generating facility, the tax is zero (P0.00) per metric ton.
- 6 Lawmakers drum up calls to suspend excise taxes on oil, By CNN Philippines, Mar 9, 2022, <https://www.cnnphilippines.com/videos/2022/3/9/Lawmakers-drum-up-calls-to-suspend-excise-taxes-on-oil.html>, Accessed on 14 April 2022.
- 7 <https://www.pna.gov.ph/articles/1157982>, Accessed on 13 April

2022.

- 8 **Section 43 of the TRAIN Law, Chapter V, Excise Tax on Petroleum Products, Sec. 148. Manufactured Oils and Other Fuels.**
- x x x
x x x
Provided, That the Department of Finance shall perform an annual review of the implementation of the excise tax on fuel and shall, based on projections provided and recommendations of the Development Budget Coordination Committee, as reconciled from the conditions as provided above, recommend the implementation or suspension of the excise tax on fuel: *Provided, further*, That the recommendation shall be given on a yearly basis: *Provided, finally*, That any suspension of the increase in excise tax shall not result in any reduction of the excise tax being imposed at the time of the suspension.
- 9 <https://newsinfo.inquirer.net/1564979/filipinos-are-suffering-drillon-sees-no-legal-obstacle-for-govt-to-halt-fuel-excise-tax>. Accessed on 12 April 2022.
- 10 **Revenue Regulations No. 15-2021** issued on 28 July 2021 **defers the implementation of Revenue Regulations (RR) No. 9-2021** relative to the imposition of 12% Value-Added Tax (VAT) on transactions covered by Section 106(A)(2)(a), Subparagraphs (3), (4) and (5), and Section 108 (B), Subparagraphs (1) and (5), both of the National Internal Revenue Code of 1997, as amended, until the issuance of an amendatory revenue regulations. **Revenue Regulations No. 9-2021** was issued on 11 June 2021 pursuant to the provisions of RA 10963 or TRAIN Law, which provides for the **imposition of a 12% VAT on indirect exports and sale of services previously taxed zero percent VAT**. However, RR 15-2021 states that the postponement is **solely due to the COVID-19 pandemic** and new amendatory regulations would be published.
- 11 **House Bill No. 10823** – An Act Providing for a Mechanism to Ensure the Steady and Uninterrupted Supply of Petroleum Products in the Country, Amending for the Purpose Republic Act No. 8479, Otherwise Known as the "Downstream Oil Industry Deregulation Act of 1998 authored by Reps. Macapagal Arroyo, Santos Recto, Bolillia, Collantes, Zarate, Gaité, et. al.
- 12 **Republic Act 8479** was enacted in order to liberalize and regulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high-quality petroleum products.
- 13 Proposed changes to oil deregulation law to benefit Filipinos, Cervantes, F., March 16, 2022, <https://www.pna.gov.ph/articles/1169910#:~:text=MANILA%20%E2%80%93%20The%20chairman%20of%20the,with%20the%20surging%20fuel%20prices>, Accessed on 15 April 2022.
- 14 Palace bats for review of oil deregulation law, Aurelio, J., Corrales, N., March 03, 2022, Philippine Daily Inquirer, <https://newsinfo.inquirer.net/1562563/palace-bats-for-review-of-oil-deregulation-law>.
- 15 <https://www.pna.gov.ph/articles/1168367>, Accessed on 12 April 2022.
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- 17 Currently serving for her second term as a Congresswoman who won as nominee of Bagong Henerasyon (BH) Partylist in the May 13, 2019 election.
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[REPUBLIC ACT NO. **11534**]

AN ACT REFORMING THE CORPORATE INCOME TAX AND INCENTIVES SYSTEM, AMENDING FOR THE PURPOSE SECTIONS 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 AND 290 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND CREATING THEREIN NEW TITLE XIII, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the “Corporate Recovery and Tax Incentives for Enterprises Act” or “CREATE”.

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to develop the national economy towards global competitiveness by implementing tax policies instrumental in

Updates on the Fiscal Incentives Review Board and the Implementing Rules and Procedures of RA 11534 or the Corporate Recovery and Tax Incentives for Enterprises

Angelique M. Patag
LSO V, Tax Policy and Administration Branch

On 24 August 1975, the Fiscal Incentives Review Board (FIRB) was created under Presidential Decree (PD) No. 776, which is tasked to determine what tax should be withdrawn, revoked or suspended under a specified fiscal framework. However, PD 1931 (11 June 1984) and PD 1955 (15 October 1984) withdrew the tax exemptions of government and private entities respectively, and the FIRB was given the responsibility to review which of these withdrawn tax privileges may be restored. This resulted in the reinstatement of a number of tax privileges.

When EO No. 93 withdrew on a general basis the tax and duty exemption of both government and private entities effective March 10, 1987, it also instituted a system of subsidy to take care of tax and duty liabilities of government entities affected thereby for the purpose of fiscal transparency. The administration of this subsidy for government-owned and controlled corporations (GOCCs) was given to the FIRB and in the case of national government agencies (NGAs), to the Department of Budget and Management (DBM).

RA 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, signed by the President on March 26, 2021, aims to, among others, develop a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent.

The CREATE Act has significantly reduced the corporate income tax (CIT) rate from 30% to 20% for domestic micro, small and medium enterprises, and lowered the tax rate to 25% for all corporations. CREATE also offers a simplified and rationalized investments menu for potential investors and locators.

One of the salient features of CREATE is the expanded policy making and oversight functions of the FIRB under Title XIII, Chapter III, Section 297 of RA 11534. Prior to CREATE, the FIRB’s function was limited to the administration and grant of subsidies to Government-Owned and Controlled Corporations (GOCCs). With CREATE, the FIRB is now granted vast power to ensure that the Investment Promotion Agencies (IPAs) and other concerned government agencies grant and monitor not only tax subsidies but also tax incentives.

As per the CREATE law, business enterprises registered with the IPAs may apply for the following incentives:

- 4 to 7 years of income tax holiday (ITH)
- 10 years of special corporate income tax (SCIT) for export enterprises
- Customs duty exemption on importation
- Value-added tax (VAT) exemption on importation and VAT zero-rating on local purchases
- Enhanced deductions such as Depreciation allowance (10% for buildings, 20% for machinery); Labor expense (150%); Research and development (200%); Training expense (200%); Domestic input expense (150%); Power expense (150%); Reinvestment allowance to the manufacturing industry (Up to 50%); Enhanced NOLCO – losses during the first 3 years may be carried over within the next 5 consecutive years.

It shall be noted that CREATE was enacted not

only to encourage investments but also to increase competitiveness of the country in the global market.

To achieve this, the FIRB is tasked with streamlining a Strategic Investment Priority Plan (SIPP) worthy of investors' minimum investment capital of P5 million and more, which is required to enjoy the special corporate income tax (SCIT) of 5% over 10 years. Among the industries identified under the SIPP are electrical and electronics, chemical and pharmaceuticals, machinery and transport, agriculture and agribusiness, information technology-business process management, research and development, and artificial intelligence, automation, robotics, and digital technologies.

These are the rules and procedures for Registered Business Enterprises (RBEs) in applying for incentives:

- RBE should check if its proposed activity is included in the SIPP. Pending the finalization and approval of the President of said list, the 2020 Investments Priority Plan of the Board of Investments (BOI) serves as the transitional SIPP.
- RBE to get in touch with its preferred IPA for assistance and additional information on available investments.
- RBE is required to create an online account through the Fiscal Incentives Registration and Monitoring System (FIRMS) in order to proceed with the filing of application, which the concerned IPA will review.
- Using the FIRMS account, RBE should accomplish the application forms for registration and attach the required supporting documents. For RBEs with existing registered activities, log each registered activity in the appropriated section. The system will notify the applicant if the application is submitted successfully.
- Upon successful submission, the IPA will begin its evaluation. For activities with investment capital above Php 1 billion, the IPA will endorse the application to the FIRB for review.
- The Certificate of Registration will be issued by the IPA to the applicant upon approval of the IPA or FIRB and acceptance of Terms and Conditions by said applicant.

Presently, the FIRB board is composed of the Secretary of Finance and the Secretary of Trade and Industry as Co-Chairpersons, the Executive Secretary of the Office of the President, the Secretary of Budget and Management, and the Director General of the National Economic and Development Authority.

To provide in-depth information, compiled answers to common questions on different topics identified as Frequently Asked Questions (FAQs) are as follows:

1. Forms and Online System

Who should create a FIRMS account?

- Businesses looking to register a new activity/project and apply for tax incentives.
- Business enterprises with at least one activity/project currently registered with an investment promotion agency (IPA)

Each business enterprise may only register one FIRMS account.

What documents should be submitted through FIRMS?

As of now, FIRMS only accepts three forms:

- Form A: Business Enterprise Registration
- Form B: Activity/ Project Currently Registered with an IPA
- Form C: New Activity/Project Registration (includes a page for all other documentary requirements your IPA may ask for as part of the application process)

All other reports or requirement may, for now, be submitted directly to your IPAs.

Are IPAs allowed to use its existing application forms for registration and tax incentives?

- No. The FIRB shall prescribe the forms for application for registration and availment of tax incentives on a per project basis. This is for purposes of uniformity and establishing a database that will also aid the FIRB in its conduct of ex post CBA. [Rule 21 in relation to Rule 8, Section 2 of IRR]

Will the prescribed FIRB application form be available in the FIRB online system for easier access of all possible registrants?

- Yes. The link to the application form shall be made available to all IPAs via an online system called FIRMS where RBEs can submit their applications for registration to the concerned IPA. [Rule 6, Section 3 of IRR]

When will the online system be accessible? How will it be used?

- The Fiscal Incentives Registration and Monitoring System or FIRMS is already live and can be accessed through the FIRB website.

Since some of the IPAs already have an online application system, can it be integrated with the FIRB online system?

- Yes, the existing online systems of IPAs for registration can be used if they are interoperable with and can be linked to the FIRB system. [Rule 6, Section 3 of IRR] Alignment meetings between FIRB and IPAs are being held to discuss the interoperability of existing systems.

2. CREATE Implementing Rules and Regulation (IRR)

When did the IRR become effective?

- The IRR became effective upon its publication in the Manila Standard on June 26, 2021. [Rule 24, Section 4 of IRR]

What will the IPAs do with the applications for registration now that the CREATE IRR has been issued?

- The IPAs will now have to follow the registration process under Rule 6 of the CREATE IRR.
- Under the CREATE IRR, activities or projects of export and domestic market enterprises may qualify for registration under the CREATE Act provided that such activities or projects are included in the SIPP and satisfy the qualifications provided therein.

Can the IPAs immediately process applications for registration or tax incentives upon issuance of the IRR?

- Yes, provided that the process and approval of applications for registration or tax incentives conform with the guidelines and conditions prescribed in the IRR. [Rule 5, Section 2 of IRR]

3. Strategic Investment Priority Plan (SIPP)

Is there already a timeline for the drafting and issuance of the SIPP?

- Yes. The BOI will present the draft SIPP to the Steering Committee, composed of the BOI Managing Head, representatives of the Office of the President and the IPAs, and the Chairperson of the Technical Committee of the FIRB, by October 2021. After the Steering Committee reviews the draft, it shall then give its recommendations to the BOI, which, in turn will review and give its recommendation to the President, for his approval. [Rule 4, Sections 2 and 5 of IRR]

In the absence of the SIPP, what shall be the interim SIPP?

- Pending the issuance of the SIPP, the 2020 Investment Priorities Plan (IPP) approved on November 18, 2020 by the President, through the issuance of Presidential Memorandum Order No. 50, series of 2020, shall serve as the transitional SIPP pursuant to FIRB Resolution 5-21. [Rule 4, Section 5 of IRR]
- As proposed by the BOI and approved by the FIRB, activities under the 2020 IPP may be eligible for incentives under the Tier I classification, without prejudice to upgrade to Tiers II or III if qualified under the new SIPP.

Suppose a registered business enterprise (RBE) applied for tax incentives during the effectivity of the 2020 IPP as the transitional SIPP and the application was approved, what will be the effect if its project or activity is no longer included in the new SIPP?

- The issuance of the SIPP shall not prejudice the availment of the tax incentives already granted to RBEs during the effectivity of the 2020 IPP

as the transitional SIPP. [Rule 4, Section 6 of IRR]

What are the activities included per tier which will be defined under the SIPP?

- The SIPP shall define the coverage of the tiers and provide the conditions for qualifying the activities. Under the law, the following activities constitute Tiers 1 to 3 [Rule 3, Section 6 of IRR]:

Tier I - Those that have (a) high potential for job creation; (b) take place in sectors with market failures resulting in under-provision of basic goods and services; (c) generate value creation through innovation, upgrading or moving up the value chain; (d) provide essential support for sectors that are critical to industrial development; or (e) are emerging owing to potential comparative advantage.

Tier II – Those that produce supplies, parts and components, and intermediate services that are not locally produced but are critical to industrial development and import-substituting activities, including crude oil refining.

Tier III - Include (a) research and development that result in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high-paying jobs; (b) generation of new knowledge and intellectual property registered and/or licensed in the Philippines; (c) commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by a registered business enterprise; (d) highly technical manufacturing; or (e) are critical to the structural transformation of the economy and require substantial catch-up efforts. [Rule 4, Section 4 of IRR]

4. Period of Availment

What will happen to the RBE's availment for tax incentives if it fails to commence its actual operation within three (3) years from the date of registration or the date indicated in the SIPP?

- As a general rule, if an RBE fails to commence its actual operation within three (3) years from the date of registration or the date indicated in the application, the IPA or FIRB may cancel its availment of tax incentives. [Rule 3, Section 4 of IRR]

What happens after the expiration of the period of availment of incentives of RBEs?

- After the expiration of the period of incentives, all registered business enterprises shall pay all applicable taxes at the regular rates under NIRC of 1997, as amended and other laws. [Rule 2, Section 8 of IRR]

What is the effect of the cancellation, suspension,

or withdrawal of fiscal incentives?

- The FIRB shall require the payment of taxes, customs duties, and any applicable penalties thereon to the appropriate revenue collecting agency. [Rule 22, Section 4 of IRR]

5. Application for Registration

What happens if the applicant submitted incomplete documents for application?

- The concerned IPA shall **notify** the applicant of the documents needed to complete its application within **three (3) working days** after the receipt thereof.
- Upon completion of all the pertinent documents, the application shall then be officially accepted and a notice shall be given to the applicant.
- If the applicant fails to complete the application within seven (7) working days from the receipt of notification from the IPA, the application shall automatically be withdrawn. This is without prejudice to the right of the applicant to reapply. [Rule 6, Section 5 of IRR]

To whom should potential investors submit their application for registration?

- All applications for registration shall be filed and submitted to IPAs through FIRMS or the IPAs' interoperable systems as they have the exclusive jurisdiction to register all projects or activities availing of tax incentives. [Rule 5, Section 2 of IRR] You will select which IPA you are registering to using FIRMS.

Should an RBE with investment capital of more than P1 billion submit its application for tax incentives directly to the FIRB?

- No. All applications for registration must be filed and submitted to the concerned IPA. The registration of projects or activities is within the exclusive jurisdiction of the IPAs regardless of the amount of investment capital. The IPA needs to conduct an initial evaluation of the application and submit its recommendation to the FIRB. [Rule 5, Section 2 of IRR]

Will RBEs registered with an IPA prior to the CREATE Act still be allowed to register their registered projects or activities including qualified expansion projects?

- Yes. RBEs with new projects or activities may apply for registration provided that the activity or project is listed in the SIPP or in the transitional SIPP (2020 IPP). [Rule 17, Section 1 of IRR]

Given that the President vetoed that provision in the CREATE Act that provides for the deemed approval of the application for tax incentives not acted upon within twenty (20) days from the date of submission of the application and complete relevant supporting documents to the FIRB, how long is the processing time of one application for tax incentives under the jurisdiction of the FIRB?

- The application for tax incentives shall comply

with the *Ease of Doing Business and Efficient Government Service Delivery Act of 2018*.

- For registered projects and activities with investment capital of P1 billion and below which shall fall under the jurisdiction of the IPA, the total processing time shall not exceed twenty (20) working days.
- For registered projects and activities with investment capital of over P1 billion which shall fall under the jurisdiction of the FIRB, the total processing time shall not exceed forty (40) working days.

When will the processing commence for tax incentives application?

- Processing shall commence upon submission of **complete** documentary requirements as prescribed in RA 11534, its IRR and other relevant issuances. [Rule 6, Section 5 of IRR]

Will the Certificate of Registration (COR) granted to RBEs automatically entitle them to tax incentives under the CREATE Act?

- No. The COR issued to business enterprises shall serve as the basis of their tax incentives entitlement. A separate application for tax incentives availment shall be filed with the concerned IPA. [Rule 7, Section 2 of IRR]
- Upon verification of the compliance with the terms and conditions of the RBE of its registration, a Certificate of Entitlement to Tax Incentives (CETI) shall be issued to the applicant by the concerned IPA. [Part III, Rule 8, Section 3 of the CREATE IRR]

What is the process of evaluation in the IPA and FIRB?

IPA Level [Rule 6, Section 6 of IRR]

- Pre-evaluates the application.
- Conducts an initial impact evaluation to determine ex ante impact of tax incentives to the investment project or activity applied for.
- Order payment for the filing fee and stamp the date of official filing as well as the application number.
- Notifies the applicant of any issue encountered during the evaluation process. The applicant shall then be given a reasonable time to address the issues the IPA encountered or comply with the additional requirements, if any.
- The FIRB decides on the recommended tax incentives by the concerned IPA for projects or activities with investment capital of more than 1 billion.

FIRB – Applications above P1 billion [Section 7, Rule 6 of IRR]

Secretariat

- Reviews the evaluation, ex-ante CBA, and recommendation of the IPA.
- Prepares an evaluation report.
- Submits the evaluation report to the FIRB Technical Committee.

- Provides for a copy of the Board Resolution upon approval by the Board Proper

Technical Committee

- Reviews the Secretariat's recommendation and submits its own recommendation to the Board.

Board Proper

- Decides on the application and issues Board Resolution

If the FIRB disapproves a tax incentives application, will an RBE be allowed to re-apply?

- Yes. The RBE may re-apply if the application for tax incentives is disapproved by the FIRB or it may appeal the decision of the FIRB to the Court of Tax Appeals. **[Rule 13, Section 12 of IRR]**

6. Power of the President to Grant Tax Incentives

What is the evaluation process under the power of the President to grant tax incentives?

- The business enterprise signifies, upon application for registration before the concerned IPA, its interest to avail of the incentives or financial support package under the power of the President to grant incentives.
- The IPA transmits to the FIRB Secretariat its evaluation report and its recommendation.
- Upon review, the FIRB Secretariat forwards its evaluation report to the FIRB Technical Committee.
- The Technical Committee evaluates the evaluation report of the FIRB Secretariat and forwards its recommendation to the Board Proper.
- Upon review by the Board Proper, and that the conditions set forth under the CREATE Act is met by the business enterprise, the Board Proper shall issue a resolution recommending the grant of incentives and the resolution shall be transmitted to the Office of the President. **[Rule 6, Section 7 of IRR]**

What are the conditions for the exercise of the President of his power to grant incentives?

The exercise of the President of his powers to grant incentives shall be based on the positive recommendation of the FIRB upon satisfactory determination of the following:

- The project has a comprehensive sustainable development plan with clear inclusive business approaches, and high-level sophistication and innovation; and
- Minimum investment capital of P50 billion or its equivalent in USD or a minimum direct local employment generation of at least 10,000 within three years from the issuance of the COR. **[Rule 10, Section 3 of IRR]**

What will happen to the incentives afforded to a project approved by the President if it fails to deliver its commitments?

- If the project fails to substantially meet the agreed performance targets, the FIRB may recommend to the President the cancellation of the tax incentive or financial support package or the modified period or manner of availment of incentives. **[Rule 10, Section 5]**

7. Impact Evaluation/ Cost Benefit Analysis

How will IPAs do impact evaluation?

- The concerned IPA shall conduct an initial impact evaluation using methods such as the ex-ante cost-benefit analysis (CBA) to assist in the decision making and appraise the projected costs and benefits of the project or activity being evaluated. **[Rule 6, Section 6 of IRR]**
- The DOF and the FIRB Secretariat have developed an initial framework for the ex-ante CBA, which is being rolled out to all IPAs.

Will the conduct of ex-post CBA by the FIRB be limited only to those applications that it processed?

- No. The FIRB will conduct an ex-post CBA on all projects or activities regardless of investment capital. **[Rule 16, Section 1(B) of IRR]**

8. Transition

What happens to RBEs currently availing of tax incentives in an IPA (e.g. PEZA) but are presently located in another IPA (e.g. JHMC) that has no authority to grant incentives prior to the enactment of the CREATE Act?

- RBE registered in one IPA whose operation is located within the territorial jurisdiction of another IPA may continue to avail of its existing incentives during the transition period with the IPA that granted its tax incentives. **[Rule 18, Sec. 1]**

What happens to RBEs enjoying tax incentives prior to the effectivity of the CREATE Act?

There are three (3) rules governing the scenarios prior to the effectivity of the CREATE Act:

- If the RBE is granted only an ITH, it shall be allowed to continue such availment for the remaining period unutilized;
- If the RBE is granted an ITH and a 5% tax on gross income earned (GIE) thereafter, it may continue to avail the granted incentives for the remaining period not to exceed ten (10) years; and
- If the RBE is granted and currently availing of the 5% tax on GIE, it shall be allowed to continue availing such for 10 years.

For non-income related tax incentives, the RBE will continue to enjoy duty exemption until the expiration of Certificate of Authority to Import (CAI)/ admission entry or until the expiration of the transitory period under Section 311 of the Tax Code. Provided, That the VAT exemption on importation

and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of the export enterprises subject to the provisions of RR 9 -2021 [Rule 18 of IRR].

Will the FIRB charge additional processing fees?

- No. The FIRB will not charge additional processing fees as the CREATE Act does not confer to the FIRB the authority to impose fees. [Rule 13, Section 1 of IRR]

What are the reportorial requirements that the IPAs should require for its registered business enterprises?

- Within thirty (30) calendar days from the statutory deadline for filing of tax returns and payment of taxes, registered business enterprises are required to file with their IPAs a complete annual tax incentives report (ATIR) of their income-based tax incentives, VAT exemption and zero-rating, customs duty exemptions, deductions, credits or exclusions from the income tax base and exemptions from local taxes, and a complete annual benefits report which shall include the approved and actual amount of investments, approved and actual employment level and job creation, approved and actual exports and imports, domestic purchases, profits and dividend payout, all taxes paid, withheld and foregone, which shall be simultaneously submitted to the FIRB. [Rule 11, Section 2 of IRR]

What are the reportorial requirements that the IPAs need to submit to the FIRB?

- Annual Tax Incentives Report and Annual Benefits Report;
- Registered products and services for export or domestic consumption that are entitled to incentives;
- Master list of all RBEs availing tax incentives 30 days after the issuance of the IRR; and
- Monthly approved investments of P1 billion and below. [Rule 11, Section 4 of IRR]

What will be the remedy of an RBE with P1 billion investment capital and below, in case of a denial by the IPA Board of its application for tax incentives?

- In case of an adverse decision, the remedies available to the RBE will be governed by the IPA's charter, IRR, and its issuances.

Can the RBE file a motion for reconsideration with the FIRB in case of denial of its application for tax incentive before elevating it to the Court of Appeals?

- No. As provided under Section 12, Rule 13 of the CREATE IRR, the decision of the FIRB on the application for tax incentives of the RBE shall be final and immediately executory. [Rule 13, Section 12 of IRR]

What is the remedy of an RBE with more than P1 billion investment capital in case of a denial of its application for tax incentives by the FIRB?

- The CREATE Act provides that a BE adversely affected by the decision of the FIRB may, within thirty (30) days from receipt of the adverse decision, appeal the same to the Court of Tax Appeals. [Rule 13, Section 12 of IRR]

Will the FIRB issue the COR and CETI to RBEs with approved applications for registration and tax incentives, respectively?

- No. The COR and CETI shall be issued by the concerned IPA, in the forms prescribed by the FIRB. [Rule 8, Section 4, Rule 7, Section 2, and Rule 21 of IRR]

What will happen if the RBE fails to apply for CETI, but has a COR?

- If no application for the CETI is made, the COR issued by the IPA cannot serve as basis for the availment of tax incentives. [Rule 4, Sections 3 and 4 of IRR]

What will be issued to the registered business enterprise in case its application for tax incentives has been denied by the concerned IPA or the FIRB?

- The RBE will receive a notice of denial from the concerned IPA or the FIRB. [Rule 7, Section 1 of IRR]

What are exceptional circumstances and what are the temporary measures that may be adopted?

Exceptional circumstances include pandemic, epidemic, war, armed conflict, state of national emergency, outbreak of diseases, international or regional financial crisis, major disaster such as volcanic eruption, earthquake and super typhoon, or analogous circumstances.

The temporary measures that may be adopted may include any of the following:

- Suspension of export requirement;
- Deferment of the income tax incentive availment period;
- Movement of the start of commercial operations with full entitlement to incentives under the terms and conditions of the registered project or activity; or
- Adoption of any other measures as may be reasonable to recover from such circumstances, subject to FIRB approval upon the recommendation of the IPA.

The temporary measures shall, without diminution of incentives, cover all RBEs that are affected by such exceptional circumstances. [Rule 23, Sections 1 and 3 of IRR]

What is the effect on the incentives of RBES affected by exceptional circumstances?

- The affected RBEs incentives or its period of availment shall be maintained consistent with its terms and conditions during the implementation of the temporary measure. [Rule 23, Section 5 of IRR]

How can RBEs avail the temporary measure?

- The affected RBE shall submit to the concerned IPA its application, together with the relevant documents, showing the adverse effects of such exceptional circumstances to avail of the temporary measure. The IPA shall provide the FIRB its recommendation for the Board's approval. [Rule 23, Section 6 of IRR]

What is the duration of the availment of the temporary measures?

- Upon the approval of the FIRB, the temporary measure shall be effective from the time of the declaration of such exceptional circumstance by the President, the relevant government agency, or the World Health Organization, as the case may be, until the same has ended or has ceased to exist, or corresponding to the duration that the RBE operation has been affected or disrupted, as applicable. [Rule 23, Sections 2 and 4 of IRR]



CTA Tax Case Digest

CHEVRON HOLDINGS INC. vs. COMMISSIONER OF INTERNAL REVENUE

Case No. 9266

Promulgated on March 16, 2022

Johann Francis A. Guevarra
LSO III, Legal and Tariff Branch

Facts:

Petitioner Chevron Holdings Inc. sought reconsideration of the October 7, 2020 Decision of Court which granted it a reduced amount of P6,443,989.88 in tax credit. It is Petitioner's claim that they are entitled to tax credit certificate in the amount of P84,228,009.20 representing alleged excess unutilized input VAT attributable to zero-rated sales for calendar year 2014.

The Court of Tax Appeals granted Petitioner's Motion to Reopen the Case, in the interest of truth and justice.

Issue:

Whether or not the VAT zero-rated transactions in the CTA Decision on October 7, 2020 is valid.

Ruling:

- 1) Petitioner proved that it had zero-rated sales during the subject period but only in the amount of 3,017,039,914.02.

To be considered as a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported at the very least, by both the Certificate of Non-Registration of Corporation/Partnership issued by the Securities

and Exchange Commission (SEC) and proof of foreign incorporation/registration (i.e. Certificate/Articles of Foreign Incorporation/Association of printed screenshots of US SEC Website showing the state/province/country where the entity was organized or Tax Residence Certificate); in relation to Section 108(8)(2) of the Tax Code where the claimant must establish the two (2) components of a client's NRCF status, vis:

- a) That their client was established under the laws of a country not the Philippines or simply not a domestic corporation; and
- b) That it is not engaged in trade or business in the Philippines.

In the case at bar, Petitioner made valid zero-rated sales to seven (7) clients which were considered as non-resident foreign corporations (NRFCs).

- 2) Sales to Chevron Holdings Inc. are considered as zero-rated sales.

With regard to Sales to Chevron, the VAT zero-rated sales were initially not allowed by the Court on account of petitioner's failure to submit its service agreement or any contract to prove that the services rendered are those other than processing, manufacturing, repacking goods as provided in Section 108 (B)(2) of the NIRC, as amended.

Petitioner contends that even if there is no service agreement to show that services rendered to said client were "other than processing, manufacturing or repacking of goods" the SEC Certificate of Registration would be sufficient to show that the type of services rendered falls within the scope of "services other than processing, manufacturing or repacking of goods".

Upon review of its Certificate of Registration and License duly issued by the SEC, petitioner is licensed to do business as Regional Operating Headquarter (ROHQ) in the Philippines. Petitioner is authorized to engage in the following services or functions : general administration and planning; business planning and coordination; sourcing and procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services, and product development; technical support and maintenance; data processing and communication; and business development.

Moreover, based on the un rebutted testimony of Petitioner's witness, Chevron Manager Benedicto A. Santos, there are approximately 1800 entities embraced and operating under Chevron Group of Companies worldwide. Given the enormity of petitioner's organization, it would be impractical and unfeasible to request each and every affiliate a written contract with the Petitioner before providing services.

Petitioner's SEC Registration and License and the un rebutted testimony of Mr. Santos, taken together convinced the Court, that the services rendered by Petitioner Chevron falls within the scope of "services other than processing, manufacturing or repacking of goods". Accordingly, the Court reconsidered the previously disallowed zero rated sales.

3) Petitioner proved its additional zero rated sales.

Upon review of evidence submitted, the Court found additional clients of Petitioner as NRFC, hence entitled to zero-rated sales. However, there were also zero-rated sales to NRFCs which were disallowed for Petitioner's failure to prove payment for such sales in an acceptable foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP), i.e. the payments were not supported by proof of inward remittance; and

Petitioner's failure to comply with the invoicing requirements under Section 113 of the NIRC of 1007, as amended and Section 4,113-1 of Revenue Regulation (RR) No. 16-2005, or petitioner's failure to submit VAT official receipt (ORs) also resulted in the disallowance of certain zero-rated sales to NRFCs.

4) Petitioner incurred/paid input taxes attributable to

zero-rated sales and said input taxes were not applied against any output VAT liability

Upon reevaluation of documents submitted by the Petitioner, the previously held unreadable information on certain VAT ORs were found to be legible and compliant with the invoicing requirements provided under the law and regulations. Thus, input VAT amounting to P3,953,719.98 was allowed.

On the disallowance by the CTA of input VAT on domestic purchases of services due to alterations without authorized countersignature, the CTA held; *"while petitioner had the right to request its supplier to issue a compliant VAT official receipt/invoice, it had the corresponding obligation to check whether the insertions or alterations were properly validated or countersigned by the authorized signatory."* The CTA maintained that except for ORs which had valid alterations, ORs with a total amount of P873,842.53, showed alterations which were made without authorized countersignatures.

5) Petitioner failed to substantiate its alleged input VAT carried over from previous periods

Sections 110(A)(1) and (B) of the NIRC of 1997, as amended, requires that any input VAT shall be creditable against the output VAT only if the same is evidenced by a VAT official receipt/invoice issued in accordance with Section 113 of the NIRC of 1997, as amended. In the computation of the output VAT liability for the period, prior year's excess input VAT credits may be utilized to cover for such liability.

Contrary to petitioner's assertion, the aspects that must be substantiated by Petitioner include its input tax carry-over from the previous taxable period especially since its current output tax liability is offset against the said carried-over input tax. In this case, Petitioner merely relied on its VAT returns to show the amount of its input VAT carry-over, and not with VAT official receipts/invoices as required by Sections 110(A)(1) and (B) of the NIRC of 1997, as amended.

The total adjusted allowable input VAT shall then be allocated to petitioner's VATable and VAT-zero rated sales in accordance with Section 112(A) of the NIRC of 1997, as amended. Since Petitioner's valid input VAT in the amount of P2,850,361.11 allocated to sales subject to 12% VAT is insufficient to cover the P16,694,717.51 output VAT liability reported in its Quarterly VAT Returns, the output VAT still due against Petitioner.

In summary, Petitioner has sufficiently proven that it is entitled to a total VAT refund of P49,789,268.42 or an additional amount of P43,345,278.54. Therefore, Petitioner's Motion for Reconsideration (Re: Decision dated October 7, 2020) filed on October 28, 2020 was partially granted.



In This Corner:

JUST XIP IT: A Look at the BOC's X-Ray Inspection Project

Atty. Sherry Anne Calulo-Salazar
Director III, Legal and Tariff Branch

The Bureau of Customs (BOC) X-Ray Inspection Project (XIP) was officially initiated with the issuance of **Customs Memorandum Order (CMO) No. 6-2007** (28 March 2007). This CMO was drafted pursuant to the provisions of *Executive Order No. 592, s. 2006*¹, and also to implement the directives under *CMO No. 30-1996*², which aimed to create a *Customs Scanning Career Service* within the BOC.

The non-intrusive examination of cargoes has been a standing policy of the BOC in its efforts to facilitate the release of imported goods coming through our ports. As early as 2002, the BOC has issued **Customs Administrative Order (CAO) No. 1-2002** to formally introduce the use of x-ray machines, both parcel and container x-ray units, as an alternative to actual physical examination of shipments. The main objectives laid down in this CAO remains true up to this day, to wit:

1. In the pursuit of trade facilitation and law enforcement;
2. To provide optimum service for the transacting public in the BOC;
3. To effectively reduce the number of shipments that may be subjected to actual physical inspection with a higher degree of positive results; and
4. Pinpointing with accuracy the shipments that need to be subjected to physical examination.

The XIP unit started initially under the Office of Commissioner of the BOC, with the *Commissioner* acting as overall Project Head and assisted only by an *Executive Assistant* and a *Project Point Person*. Later on, the XIP unit was transferred to the *Enforcement Group (EG)* following the directive laid down in CMO No. 6-2014. A few years after, CMO 11-2017 realigned the position of the XIP unit back under the Office of the Commissioner in line with the then re-organization efforts made by the Bureau.

Some of the shipments that are subjected to scanning under the XIP are the following:³

1. Alerted shipments;
2. Shipments that cannot be examined by using regular examination procedures (e.g. dangerous chemicals, paints, liquid concentrates, etc.);
3. Shipments processed under informal entry especially those coming from high risk countries;
4. Consolidated shipments before delivery to consignee's warehouse;
5. Those originating from high-risk countries;
6. Export shipments;
7. Those shipments subject for x-ray scanning on the basis of derogatory report;
8. Those shipments under Orange Lane and Red Lane;⁴ and
9. All transit shipments bound for special economic zones and tagged as "orange" and "red".⁵

The BOC has utilized different types of x-ray machines for its operations, from the conventional ones to the modern and mobile types. In 2021, it was reported that the Bureau has a total of one hundred twenty-four (124) x-ray machines deployed in different ports all over the country.⁶ These 124 machines have helped the BOC collect at least P63.426 million in additional duties and taxes, and confiscated smuggled items or illegal drugs amounting to P117.394 million for the period of January to September 2021.⁷

According to the Bureau, the XIP was able to achieve a 132% increase in its scanning rate performance from 2019 to 2021.⁸ In 2019, only a total of 365,858 containers were scanned by the Bureau.⁹ A total of 513,474 containers were scanned by the BOC

for the year 2020.¹⁰ This number greatly increased the following year when the BOC was able to scan a total of 847,950 containers, or a 65% increase in its scanning performance rate.¹¹ Given the substantial scanning performance rates of the BOC for 2020 and 2021, it was no wonder that they were able to collect P100.6 million in taxes and duties for 2020, and P113.7 million for 2021 or a 13% increase in collection.¹² At the start of 2022, the XIP showed remarkable results as it yielded P33.04 million in additional taxes and duties, and paved the way for the issuance of 23 *Warrants of Seizure and Detention* (WSD).¹³

The XIP seems to hold promising results for the BOC in facilitating the efficient release of cargoes, and preventing the entry of smuggled or other illegal commodities. It is hoped that with the right budget and effective management, the Bureau will be able to acquire more capable machines that will further elevate the standards of our customs authority.

Footnotes:

1 EO 592 – Imposing the Mandatory Payment of Container Security Fee in the Implementation of the Non-Intrusive Container Inspection System (NCIS) Project of the Bureau of Customs and Creating

a Trust Fund for the Use Thereof (Signed on 16 December 2006).
 2 CMO 30-1996 – Program Development for the Creation of a Customs Career Service within the Bureau
 3 See CMO 6-2007
 4 See OCOM Memo No. 179-2020
 5 See OCOM Memo No. 110-2021
 6 Retrieved from <https://www.portcalls.com/4-x-ray-machines-boc-anti-smuggling-operations/> on 18 April 2022.
 7 *Id.*
 8 Retrieved from <https://customs.gov.ph/boc-xip-consecutively-boosts-its-scanning-rate-performance/> on 18 April 2022.
 9 *Id.*
 10 Retrieved from <https://customs.gov.ph/boc-xip-elevates-operational-performance-in-2021/> on 18 April 2022.
 11 *Id.*
 12 *Id.*
 13 Retrieved from <https://customs.gov.ph/boc-xip-continues-to-boost-its-scanning-performance-in-the-first-quarter-of-2022/> on 18 April 2022.



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 **Pia Cayetano** was live. 2d · 🌐

Thanks for tuning in to the Senate Ways & Means hearing on the proposed excise tax on plastic bags, and the rationalized grant of rewards for informers.

