



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.



TAX UPDATES FROM APRIL 16, 2023 TO MAY 15, 2023

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**Fostering Integrity and Awareness for Efficient Tax Compliance
and Enhanced Taxpayer Services**

DISCUSSION

A. SUPREME COURT DECISIONS

1. **Alkylate importations are not subject to excise taxes**

(Petron Corporation vs. Commissioner of Internal Revenue, G.R. No. 255961, 20 March 2023)

Section 148(e) of the Tax Code imposes excise taxes on naphtha, regular gasoline, and other similar products of distillation. Based on a Bureau of Internal Revenue letter stating that alkylate is a product of distillation similar to naphtha, the Bureau of Customs collected excise taxes on the alkylate importations of a petroleum company.

Subsequently, the petroleum company filed a claim for refund of the erroneously collected excise taxes.

According to the Court of Tax Appeals (CTA), although alkylate is not directly produced through distillation but by alkylation, its raw materials, light olefins, and isobutane are nonetheless products of distillation. However, since alkylate cannot exist without its raw materials, alkylate initially undergoes the process distillation. As such, the CTA held that alkylate is similar to naphtha, thus, subject to excise tax. In this light, the CTA denied the claim for refund.

However, the Supreme Court (SC) reversed the CTA decision. Initially, the SC noted that the claim for refund was not based on the excise tax exemption of alkylate but rather on the Section 148(e) of the Tax Code which does not include alkylate among the excisable articles therein. Hence, the SC applied the doctrine of strict construction of tax laws in favor of the taxpayer.

The SC granted the refund of excise taxes on alkylate importations based on the following:

Section 148(e) of the Tax Code does not expressly include alkylate or products whose raw materials are products of distillation. It only mentions naphtha, regular gasoline, and other similar products of distillation.

It is undisputed that alkylate is not produced by distillation but by alkylation. This was even confirmed by the Chief of the BIR Laboratory Section and by the CTA *En Banc*.

Alkylate does not fall under “other similar products of distillation.” It is incorrect to declare that alkylate is a product of distillation simply because its raw materials are produced through distillation.

Distillation, which is a physical separation process, does not directly cause the production of alkylate.

Alkylate is a mere component which can be blended into finished gasoline to help meet the specification requirements, particularly, those related to octane quality and volatility. It has no use as a product by itself as it does not have the necessary volatility to run an engine.

More weight was given to the testimonies of experts in the field of fuel and petroleum whose experience cannot be ignored.

2. When 30-day period to appeal to the CTA is not counted from receipt of FDDA

(Commissioner of Internal Revenue vs. Manila Medical Services, Inc., G.R. No. 255473, 13 February 2023)

After filing its protest against the Final Assessment Notice, a taxpayer received a Warrant of Distrainment or Levy (WDL) on 12 September 2014. On 10 October 2014 or within 30 days from receipt of the WDL, the taxpayer filed a Petition for Review with the Court of Tax Appeals (CTA).

According to the BIR, the Petition for Review is considered filed out of time since the 30-day period should be counted from the alleged receipt by the taxpayer of the Final Decision on Disputed Assessment (FDDA) on 09 July 2013.

The Supreme Court ruled that the adverse decision appealable to the CTA is the WDL and not the FDDA. This is because the BIR failed to prove that the taxpayer received the FDDA and even assuming that said FDDA was received, the same was void for not stating the facts, the law, rules and regulations, or jurisprudence on which it was based.

3. When RE developer not required to be DOE-registered for input VAT refund purposes

(CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. No. 247918, 01 February 2023)

A renewable energy (RE) developer engaged in the sale of electricity generated through hydropower subject to the VAT zero rate under Section 108(B)(7) of the Tax Code filed a claim for refund of excess and unutilized input VAT attributable to said zero-rated sale. The legal basis for the claim was Section 112(A) in relation to Section 108(B)(7) of the Tax Code.

According to the Supreme Court, an RE Developer anchoring its refund claim on Sections 112(A) and 108(B)(7) of the Tax Code does not need to comply with the requirements for availment of fiscal incentives under Republic Act No. 9513. Hence, it is not required to be registered with the Department of Energy (DOE), to secure DOE certification and to comply with other requirements in the DOE implementing rules and regulations and Revenue Regulations No. 7-2022.

B. REVENUE REGULATIONS

1. Amending the requirements for tax-exempt foreign-sourced dividends

(Revenue Regulations No. 5-2023, published 10 May 2023)

After the enactment of the TRAIN Law, the BIR issued Revenue Regulations (RR) No. 5-2021 to implement, among others, the income tax exemption of dividends received by a domestic corporation from foreign sources.

The BIR recently amended RR No. 5-2021 to require the domestic corporation submit comply with the following:

1. Sworn Statement (template is attached to RR No. 5-2023) should be attached to the annual income tax return (ITR) pertaining to the taxable year when the foreign-sourced dividends were received; and
2. Sworn Declaration (template is attached to RR No. 5-2023) should be attached to the annual ITR of the immediately succeeding year.

Compliance with the above requirements is sufficient to avail of the income tax exemption of foreign-sourced dividends.

In case of partial utilization or non-utilization of the dividends, the domestic corporation shall be liable to pay the corresponding income tax due thereon (plus surcharge, interest and penalties) by amending the concerned annual ITR. If such amendment is already barred by the 3-year period, BIR Form No, 0605 shall instead be used.

2. Amending the requirements for tax-exempt foreign-sourced dividends *(Revenue Regulations No. 5-2023, published 10 May 2023)*

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3. Amending the Consolidated Value-Added Tax Regulations *(Revenue Regulations No. 3-2023, published 28 April 2023)*

Revenue Regulations (RR) No. 21-2021 amended Sections 4.106-5(a)(c) and 4.108-5(b)(3) of RR No. 16-2005 (Consolidated VAT Regulations) by providing that VAT zero-rated sales include the sale of goods, property, and services to a registered export enterprise to be used directly and exclusively in its registered project or activity pursuant to the CREATE Act.

The BIR has further amended the above provisions of RR No. 16-2005 as follows:

- Janitorial, security, financial, consultancy, marketing and promotion and administrative services are not considered directly and exclusively used in the registered project or activity.
- Local purchases of goods relating to janitorial, security, financial, consultancy, marketing and promotion and administrative services are not considered directly and exclusively used in the registered project or activity.
- Notwithstanding, the registered export enterprise (REE) may prove, with supporting evidence, to the Investment Promotion Agency (IPA) that any local purchase of the above services, or goods relating to these services are directly and exclusively used in its registered project or activity.
- In issuing VAT zero rating certifications, the IPA should be guided by the rule that local purchases are directly attributable if, without such, the registered project or activity cannot be carried out.
- If the goods are used in both the registered project or activity and administrative operations, the REE shall adopt the best method to allocate. Without a proper allocation, the purchase shall be subject to the 12% VAT.
- The issuance of a VAT zero rating certification by the IPA shall be without prejudice to the conduct of a post-audit by the BIR.
- Local suppliers of goods to REEs shall no longer be required to apply with the BIR for VAT zero-rating approval.
- VAT zero-rating applications (with accompanying VAT zero-rating certifications issued by the IPA) that were received by the BIR but not yet acted upon shall be deemed approved from the date of filing. However, this is without prejudice to the conduct of a post-audit by the BIR.
- Health maintenance organization plans acquired by REEs for employees who are directly and exclusively involved in the operations of registered projects or activities and forming part of their compensation package shall be considered directly and exclusively used in the registered project or activity.

C. REVENUE MEMORANDUM CIRCULAR

1. Inclusion of Activities in Support of Exporters as Export Activities under the SIPP

(Revenue Memorandum Circular No. 53-2023, issued 11 May 2023)

The Board of Investments (BOI) amended the Specific Guidelines on Export Activities under 2020 Investment Priority Plan (IPP), otherwise known as the transitional Strategic Investment Priority Plan (SIPP), to include the following Activities in Support of Exporters under “Export Activities”:

a. Logistics services

These must involve warehousing, inventory management and transport of goods. Mere trucking or forwarding services are excluded.

- b. Development and operation of economic zones, and industrial parks and buildings for exporters
- This covers the development and operation of economic zones, and industrial parks within export or freeport zones with integrated facilities for export-oriented enterprises.
 - This also covers the development and management of new buildings located outside the National Capital Region, declared as an economic zone or within export or freeport zones with specific features.
 - At least 70% of the leasable or saleable areas shall be dedicated to exporters.
 - Revenues arising from clients/tenants engaged in activities that are not allowed pursuant to the definition of a registered business enterprise shall not be entitled to the income tax holiday incentive.
 - Phased development of an economic zone or industrial park may be allowed if the whole project is completed within 5 years unless otherwise approved by the concerned investment promotion agency.

2. Optional filing and payment of monthly VAT returns

(Revenue Memorandum Circular No. 52-2023, issued 10 May 2023)

The Tax Code mandates the filing of the VAT return and payment of the VAT on a quarterly basis using BIR Form No. 2550Q.

Notwithstanding, the BIR has granted the taxpayers the option to file and pay VAT on a monthly basis using the monthly VAT returns (BIR Form No. 2550M). In this regard, the BIR clarified the following:

- If a taxpayer, paying VAT on a monthly basis, switches to paying VAT on a quarterly basis or vice-versa, no penalties shall arise.
- The deadline for filing BIR Form No. 2550Q and paying the VAT due thereon shall still be on the 25th day after the close of the taxable quarter concerned.
- There is no deadline for filing BIR Form No. 2550M and paying the VAT due thereon.

3. Updating the floor prices of cigarettes, tobacco and vaporized products

(Revenue Memorandum Circular No. 49-2023, issued 05 May 2023)

The BIR updated the floor or minimum prices of cigarettes, heated tobacco, vaporized nicotine, and non-nicotine products. The floor price is the minimum retail price set by the BIR taking into account the sum of the excise tax, VAT and reasonable production cost. The BIR also reiterated the penalties, sanctions and liabilities for non-compliance with the floor price under Sections 145 and 263-A of the Tax Code.

4. Additional features and functionalities of applications and facilities in the ORUS

(Revenue Memorandum Circular No. 48-2023, issued 03 May 2023)

The BIR announced the availability in the Online Registration and Update System (ORUS) of the following additional features and functionalities of (1) online applications for registration information updates and (2) other online facilities for registration-related transactions:

Business Registration	Conversion of Non-Business Taxpayers with existing TIN to Business Taxpayers
	Registration of New Branch
	Registration of New Facility
Update of Registration	Addition of Tax Type
	Registration of Additional Business/Trade Name
	Registration of Additional Line of Business
	Change in Registered Name of Non-Individual Taxpayers
	Update/Change in Registered Address or Transfer of Registration
	Update/Change of Civil Status

Taxpayers without ORUS accounts who opt to use online registration-related facilities are required to enroll and create an ORUS account following the guidelines under Revenue Memorandum Circular No. 122-2022.

5. Further clarifying the transfer of registration of IT-BPM RBEs to the BOI

(Revenue Memorandum Circular No. 46-2023, issued 19 April 2023 and FIRB Advisory No. 6-2023 dated 05 April 2023)

The Bureau of Internal Revenue (BIR) disseminated FIRB Advisory No. 6-2023 to further clarify issues regarding the supplemental guidelines for the transfer of registration to the Board of Investments (BOI) of registered business enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) sector. The clarifications pertain to, among others, the movement of capital equipment inside and outside the economic and freeport zones, and expansion projects under the Philippine Economic Zone Authority (PEZA).

Here are the clarifications:

- Only capital equipment and other assets related to the IT-BPM project or activity registered with the BOI and used to implement work-from-home (WFH) arrangements are covered by the regulations.
- The requirement to secure a tax exemption endorsement (TEI) only applies to assets intended to be moved out of or currently outside of economic and freeport zones for WFH arrangements.
- The TEI requirement does not apply to foreign-supplied intangible asset/software that will not pass through the Bureau of Customs (BOC) or any port. However, if it forms part of an imported asset, the cost of such intangible asset/software will be embedded in the purchase price of the imported tangible asset to be processed by the BOC.
- Upon registration with the BOI, WFH arrangements are already permitted. However, the movement of goods from economic and freeport zones shall be allowed only after securing a provisional goods declaration (PGD) and submitting a notarized undertaking. This also applies to new imported assets.

- The bond-free transition period for existing assets shall run from 01 January 2023 to 30 June 2023. After this period, the goods may still be allowed to be moved outside the economic or freeport zone if a PGD was secured and the surety bond has been posted.
However, in no case shall the TEI of existing assets currently outside the economic or freeport zone be secured later than one year from the issuance of FIRB AO No. 3-2023 or the end of the bond-free transition period, whichever comes later.
- If a blanket TEI was already secured for existing goods, there is no need to lodge a PGD.
- The request for staging BL or dummy BL shall be filed by the RBE with the BOC satellite offices for pre-assessment. The request shall be accompanied by a pre-assessment entry, related import documents and memorandum/letter addressed to the BOC Deputy Collector for Operations.
In this regard, the BOC requires that the inventory list of importations be covered by the blanket TEI.
- If the transit-single administrative document (TSAD) is no longer available, the related admission or import permit or any other equivalent document can also be used in lieu of the TSAD.
- The staging BL or dummy BL is a requirement to process the TEI for imported existing assets. Hence, it is not required if the WFH assets to be moved are locally purchased equipment.
- New importations starting 01 February 2023 shall be covered by an actual signed and dated Import BL/Air Waybill, not by a staging BL or dummy BL.
- The submission of the Certificate of Non-Local Availability (CNLA) for TEI processing is deferred pending the issuance of a joint DOF and DTI memorandum circular.
- Locally purchased goods used for WFH arrangements that were subjected to the VAT zero rate should be supported by a VAT zero-rating certificate issued by the concerned investment promotion agency (IPA).
- A fully depreciated asset with a 5-year useful life will be assessed based on 50% of the depreciated value using the valuation method under Section H.1 of FIRB AO No. 1-2023.
- BOC valuation for asset disposal under Section H of FIRB AO No. 1-2023 applies to locally purchased equipment enjoying VAT zero-rating.
- The valuation method under Section H of FIRB AO No. 1-2023 will only be applied prospectively. Hence, existing assets of IT-BPM RBEs that were already disposed and paid, or paid under protest before BOI registration are not covered.
- Goods are still subject to 100% BOC inspection even if the RBE is already registered with the BOI.
- If operations in an additional floor will entail an increase in production capacity, either through the installation of new IT equipment or through the hiring of additional personnel, the extension office will be considered an expansion project that may be registered for incentives separately.
However, if the extension office is intended only for rearranging office premises, the RBE shall secure a Letter of Authority from PEZA for the additional area of operations. In this instance, no additional incentives shall be granted.
- Transferee IT-BPM RBEs are still required to maintain an office inside the PEZA-registered IT Centers/Buildings. Otherwise, their PEZA registration as IT Enterprises and, subsequently, their BOI registration shall be cancelled.

- PEZA Rules and Regulations shall still apply to the operations of transferee RBEs, including the related applications for office space reduction as well as transferred operations.
- IT-BPM RBE transferees are required to update their BIR Certificate of Registration. In this regard, the IPA to be indicated in BIR Form No. 1905 shall be the new IPA followed by the old IPA, separate by a forward slash (e.g., BOI/PEZA or BOI/CDC). This will also be indicated in the income tax return.

6. Clarifying the transfer of registration of IT-BPM RBEs to the BOI

(Revenue Memorandum Circular No. 45-2023, issued 19 April 2023)

The Bureau of Internal Revenue disseminated FIRB Advisory No. 4-2023 to further clarify issues regarding the supplemental guidelines on the transfer of registration with the Board of Investments (BOI) of registered business enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) sector.

The clarifications pertain to the coverage of FIRB Resolution Nos. 26-2022 and 33-2022, the availment of incentives/registration with the BOI Philippine Economic Zone Authority.

- All registration of new or expansion projects starting 15 September 2022 shall be with the BOI only if the enterprises want to avail of the 100% work-from-home (WFH) arrangement. Prior to 15 September 2022, the IT-BPM projects may register with the BOI based on FIRB Resolution Nos. 26-2022 and 33-2022.
- IT-BPM RBEs that implemented WFH arrangements in 2023 but failed to register with the BOI by 31 January 2023 shall be subject to a penalty on the regular corporate income tax (RCIT). The penalty shall be based on 100% or the entirety of the RCIT for the month/months of non-compliance.
- After 31 January 2023, the BOI-COR cannot be amended to include new or expansion projects in order to allow the latter to implement WFH arrangements. Such new or expansion projects or activities of IT-BPM RBEs should be separately registered with the BOI to avail of WFH arrangements.
- Upon issuance of the BOI-COR, the IT-BPM RBE should submit the same to the original or concerned investment promotion agency (IPA) for the annotation of the original COR issued by the latter IPA.
- If the BOI has not yet issued the BOI-COR, the BIR and BOC shall accept the official receipt as proof that the BOI-COR will be secured by the RBE.
- The date in the official receipt shall be the effective BOI registration date which marks the beginning of the eligibility to implement a 100% WFH arrangement.
- BOI registration is an additional registration on top of the IT-BPM RBE's existing registration. The BOI registration will be the basis for fiscal incentives while the original IPA registration will be the basis for non-fiscal incentives and the corresponding terms and conditions for registration.
- The Certificate of Authority to Import, Certificate of Entitlement to Incentives and VAT zero-rating certificate shall be processed with the original or concerned IPA using their existing processes.
- If the VAT zero-rating certificate for 2023 has already been obtained from PEZA, the RBE shall request from PEZA an amended VAT zero-rating certificate for 2023 with the required annotation.

- There is no change in the share of the existing recipient local government unit as long as the IT-BPM RBE does not change its registered address or location.
- The tax exemption indorsement (TEI) is different from the Certificate of Registration and Tax Exemption (CRTE). The TEI is issued by the Department of Finance (DOF) as proof of VAT and/or customs duty exemption of imported goods while the CRTE is issued by the IPA as proof of registration of the RBE with the IPA and of available fiscal incentives.
- The TEI is applicable to all IT-BPM RBEs registered with the BOI regardless of date of registration.
- The blanket TEI applies to all imported goods as of 31 January 2023 that availed of import VAT and/or duty exemption and are still in the books of accounts of the registered project or activity. The TEI does not cover locally purchased goods.
- The TEI no longer applies if the BOC has already assessed the goods and the IT-BPM RBE has paid the related taxes and duties.
- Since the TEI shall be secured on a per-project basis, each project must secure a blanket TEI.
- The TEI can be secured from the DOF through a broker if the RBE provides an authorization letter.
- The required reports should be submitted within 30 days from the issuance date of the BOI-COR, not from the date indicated in the official receipt.
- For IT-BPM RBEs implementing hybrid WFH arrangements, employees under such hybrid arrangement shall be included in the WFH headcount to be reported. The FIRB suggested that, for simplicity, the total employee count may be multiplied by the number of working days and then deduct the total number of working days that all employees worked from home.
- Assets with zero net book value but remain in the books of accounts of the registered project or activity shall be included in the list of existing equipment provided that the assets are VAT and/customs duty exempt.
- The IT-BPM RBE should justify to the IPA any change in the equipment-to-employee ratio. If such equipment is imported and availed of import VAT and/or customs duty exemption, it shall be covered by a TEI.
- Asset movements during the bond-free period shall be supported by a provisional goods declaration (PGD) and a notarized undertaking that the related TEI shall be secured.
- As surety bond is not required to move locally purchased goods. Locally purchased goods enjoying VAT zero-rating can be freely moved in and out of economic and freeport zones as long as the supporting VAT zero-rating certification can be presented with the BOI-issued official receipt or BOI-COR and other supporting documents.
- If the Transit Single Administrative Document (TSAD) is missing, import VAT and/or customs duties shall be assessed. If the TEI cannot be secured due to missing documents, the related assets shall be assessed by the BOC.
- Once a project is registered with the BOI, there is no limit as to the period of enjoyment of the WFH arrangement.
- The TEI is required to be secured for assets imported starting 1 February 2023. The FIRB recommends the filing of the TEI within at least 10 days before the arrival of the assets.
- The IT-BPM RBE is required to secure one blanket TEI per project with respect to existing goods. For new goods, however, one TEI per shipment per project should be secured.