

Tax Bulletin

May 2023

In everything we do, we nurture leaders
and enable businesses for a better Philippines.

#SGVforABetterPhilippines



A member firm of Ernst & Young Global Limited

Table of contents

I. BIR Administrative Requirements	Page number
Revenue Regulation No. 3-2023 amends certain provisions of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 21-2021, implementing Sections 294 (E) and 295 (D) of Title XIII of the Tax Code, as introduced in Republic Act (RA) No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprise Act" (CREATE), and Section 5, Rule 2 of its Implementing Rules and Regulations (IRR), as amended.	4
RR No. 4-2023 amends Section 2 of RR No. 9-2016, on the coverage of taxpayers required to file returns through Electronic Bureau of Internal Revenue Forms (eBIRForms).	6
RR No. 5-2023 amends RR No. 5-2021 on the requirements in availing the income tax exemption of foreign-sourced dividends by a domestic corporation.	6
Revenue Memorandum Circular (RMC) No. 45-2023 publishes the full Text of Fiscal Incentives Review Board (FIRB) Advisory No. 004-2023 clarifying the issues covering the transfer of registration with the Board of Investments (BOI) of registered business enterprises (RBEs) in the Information Technology - Business Process Outsourcing (IT - BPM) Sector.	7
RMC No. 46-2023 publishes the full text of FIRB Advisory No. 006-2023 regarding clarifications on the supplemental guidelines on the registration with the BOI of RBEs in the Information Technology - Business Process Outsourcing (IT - BPM) Sector.	9
RMC No. 47-2023 reiterates the proper time of remittance of withholding taxes by National Government Agencies and Instrumentalities (NGAs), Local Government Units (LGUs), and Government Owned and Controlled Corporations (GOCCs).	12
RMC No. 48-2023 circularizes the availability of the additional features and functionalities of online application for registration information updates and other online facilities for registration-related transactions through the Online Registration and Update System (ORUS).	12
RMC No. 49-2023 updates the floor price of cigarettes, heated tobacco, vaporized nicotine, and non-nicotine products and reiterates the imposition of corresponding penalties, sanctions and liabilities for non-compliance.	12
RMC No. 52-2023 clarifies that VAT-registered persons may continue to file and pay their VAT liabilities on a monthly basis and use BIR Form No. 2550M for the purpose.	14
RMC No. 53-2023 provides clarifications on the entitlement of Economic Zone Developers and Operators to the VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity.	14

II. Banks and Other Financial Institutions	
Amendments to the Currency Rate Risk Protection Program (CRPP) Facility and its implementing Guidelines	
BSP Circular No. 1172 amends currency rate risk protection program facility and its implementing guidelines.	15
Modified Minimum Capitalization of Conventional Banks with Islamic Banking Unit	
BSP Circular No. 1173 modifies the minimum capitalization of convention banks with an Islamic Banking Unit.	20
Availability of the Currency Rate Risk Protection Program (CRRP) Facility	
BSP Circular Letter CL-2023-026 circularizes the availability of the currency rate risk protection program facility.	20
Issuance of Documents by the Bangko Sentral ng Pilipinas (BSP)/Registering AABs in Electronic Form	
BSP Circular Letter CL-2023-027 informs the public that the BSP shall no longer issue hardcopies of electronically issued documents.	21
Guidance Paper for an Effective Anti-Money Laundering/Countering Terrorism and Proliferation Financing (AML/CTPF) Transaction Monitoring System	
BSP Memorandum No. M-2023-013 circularizes the guidelines on the design and continuing reinforcements of transaction monitoring and reporting systems.	22
Reminder to Ensure Subscriber Identity Module (SIM) Registration of BSFI Clients	
BSP Memorandum No. M-2023-014 enjoins the financial institutions to register their SIM cards.	22
Guidelines Covering Verification of Authenticity of BSP Documents Issued in Electronic Form under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended	
BSP Memorandum No. M-2023-015 provides guidelines on the verification of authenticity of BSP-issued electronic documents.	22
Cancelled and Replaced Bangko Sentral Registration Documents (BSRDs)	
BSP Memorandum No. M-2023-016 advises that registration of investments of non-residents in resident investee-firms were cancelled and replaced.	23
Extension of Deadline for Compliance of BSFI Clients with Subscriber Identity Module (SIM) Registration	
BSP Memorandum No. M-2023-017 informs the public that the deadline for compliance with SIM registration has been extended.	24
Clarification on the Definition of Infrastructure Projects for Public Use	
BSP Memorandum No. M-2022-039 clarifies the definition of infrastructure projects for public use.	24
III. Board of Investments	
BOI Memorandum Circular No. 2023 - 033 provides Recognition of Economic Zone Developers and Operators as Exporters Classified as "Activities in Support to Exporters" under the 2020 Strategic Investment Priority Plan (SIPP).	25
IV. Supreme Court Cases	
Registration with the DOE and the BOI as an RE Developer is a pre-requisite for an entity to avail of VAT zero rate on related local purchases under the Renewable Energy Act.	26
"Alkylate does not fall under the category of 'other similar products of distillation' as contemplated in Sec. 148 (e) of the 1997 NIRC, as amended, and thus, should not be subject to excise tax."	27

BIR Administrative Requirements

RR No. 3-2023 amends certain provisions of RR No. 16-2005, as amended by RR No. 21-2021, implementing Sections 294 (E) and 295 (D) of Title XIII of the Tax Code, as introduced in the CREATE Act and Section 5, Rule 2 of its IRR, as amended.

RR No. 3-2023 dated 20 April 2023

Among the salient provisions are as follows:

SECTION 2	<p>Local purchases of goods relating to the following services shall not be considered as "directly and exclusively used" in the registered project or activity of a registered export enterprise, to wit:</p> <ol style="list-style-type: none">1. Janitorial services;2. Security services;3. Financial services;4. Consultancy services;5. Marketing and promotion; and6. Services rendered for administrative operations such as Human Resources (HR), legal, and accounting. <p>The registered export enterprise is not precluded from further proving, with supporting evidence, to the concerned Investment Promotion Agency (IPA) that any of the local purchase of goods relating to the above-listed services are indeed directly and exclusively used in its registered project or activity. In all instances, in issuing the VAT zero-rating certification, the concerned IPA shall be guided by the rule that such local purchases of goods are directly attributable to the registered project or activity without which such registered project or activity cannot be carried out. <u>These are costs that are indispensable to the project or activity, i.e., without which the project or activity cannot proceed, and these include expenses that are necessary or required depending on the nature of the registered project or activity of the export enterprise.</u></p> <p>If the purchased goods are used in both the registered project or activity and administrative operations, the registered export enterprise shall adopt a method to best allocate the same. If a proper allocation could not be determined, the purchase of such goods shall be subject to 12% VAT.</p> <p>The VAT zero-rating on local purchases of goods shall be availed of on the basis of the VAT zero-rating certification issued by the concerned IPA, without prejudice, however, to the conduct of post audit investigation/verification by the BIR that the goods are indeed directly and exclusively used by the registered export enterprise in its registered project or activity.</p> <p><u>Local suppliers of goods of registered export enterprise shall no longer be required to apply for approval of VAT er-rating with the BIR. All applications with accompanying VAT zero-rating certification issued by the concerned IPA which have been received but have not yet acted upon by the concerned office of the BIR upon the effectivity of these Regulations shall be accorded VAT zero-rating treatment from the date of filing of such application subject to the conduct of post audit by the BIR that the goods are indeed directly and exclusively used by the registered export enterprise in its registered project or activity.</u></p> <p>The concerned IPA shall furnish the BIR through the Assessment Service Attention Audit Information, Tax Exemption and Incentives Division (AITEID) within twenty (20) days following the close of each taxable quarter a list of registered export enterprise issued with VAT zero-rating certification.</p>
------------------	--

SECTION 3	<p>Health maintenance organization (HMO) plans acquired by registered export enterprise for its employees who are directly and exclusively involved in the operations of their registered projects or activities and forming part of their compensation package shall be considered as "directly and exclusively used" in the registered project or activity of a registered export enterprise subject to the conditions provided under the existing laws, rules and regulations regarding the availment thereof.</p> <p>The following local services shall not be considered as "directly and exclusively used" in the registered project or activity of a registered export enterprise, to wit:</p> <ol style="list-style-type: none"> 1. Janitorial services; 2. Security services; 3. Financial services; 4. Consultancy services; 5. Marketing and promotions; and 6. Services rendered for administrative operations such as Human resource (HR), legal and accounting <p>Similar to Section 2, the registered export enterprise is not precluded from further proving, with supporting evidence to the concerned IPA that any of the above-listed local purchases of services are indeed directly and exclusively used in its registered project or activity.</p> <p>Also, if the purchased services are used in both the registered project or activity and administrative operations, the registered export enterprise shall adopt a method to best allocate the same. If a proper allocation could not be determined, said services shall be subject to 12% VAT.</p> <p>The VAT zero-rating on local purchase of services shall be availed of on the basis of the VAT zero-rating certification issued by the concerned IPA, without prejudice, however, to the conduct of post audit investigation/ verification by the BIR that the services are indeed directly and exclusively used by the registered export enterprise in its registered project or activity.</p> <p>Local suppliers of services of registered export enterprise shall no longer be required to apply for approval of VAT zero-rating with the BIR. All applications with accompanying VAT zero-rating certification issued by the concerned IPA which have been received but <u>have not yet acted</u> upon by the concerned office of the BIR upon the effectivity of these Regulations shall be accorded VAT zero-rating treatment from the date of filing of such application subject to the conduct of post audit by the BIR that the services are indeed directly and exclusively used by the registered export enterprise in its registered project or activity.</p> <p>The concerned IPA shall furnish the BIR through the Assessment Service Attention: Audit Information, Tax Exemption and Incentives Division (AITEID) within twenty (20) days following the close of each taxable quarter a list of registered export enterprise issued with VAT zero-rating certification.</p>
------------------	--

RR No. 4-2023 amends Section 2 of RR No. 9-2016, on the coverage of taxpayers required to file returns through eBIRForms

RR No. 4-2023 dated 4 May 2023

The following non-eFPS filers are covered by these Regulations:

- ▶ Accredited Tax Agents/Practitioners and all its client-taxpayers;
- ▶ Accredited Printers of Principal and Supplementary Receipts/Invoices;
- ▶ One-Time Transactions (ONETT) taxpayers who are classified as real estate dealers/developers; those who are considered as habitually engaged in the sale of real property and regular taxpayers already covered by eBIRForms. Thus, taxpayers who are filing BIR Form No. 1706, 1707, 1800, 1801, and 2000-OT (for BIR Form No. 1706 only) are excluded in the mandatory coverage from using eBIRForms;
- ▶ Those who shall file a "No Payment Return";
- ▶ Government-Owned-or-Controlled Corporations (GOCCs);
- ▶ Local Government Units (LGUs), including Barangays, and
- ▶ Cooperatives registered with National Electrification Administration (NEA) and Local Water Utilities Administration (LWUA).

RR No. 5-2023 amends RR No. 5-2021 on the requirements in availing the income tax exemption of foreign-sourced dividends by a domestic corporation.

RR No. 5-2023 dated 7 March 2023

- ▶ In general, foreign-sourced dividends received by domestic corporations are subject to Income Tax. However, the same shall be exempt if all the following conditions are met:
 1. The dividends received or remitted into the Philippines are reinvested in the business operations of the domestic corporation within the next taxable year from the time the foreign-sourced dividends were received or remitted;
 2. The dividends received shall be used to fund the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries and infrastructure project; and
 3. The domestic corporation holds directly at least 20% in value of the outstanding shares of the foreign corporation and has held the shareholdings uninterruptedly for a minimum of two years at the time of the dividends distribution. In case the foreign corporation has been in existence for less than two years at the time of dividends distribution, then the domestic corporation must have continuously held directly at least 20% in value of the foreign corporation's outstanding shares during the entire existence of the corporation.
- ▶ If any one of the above conditions is absent, the foreign-sourced dividends shall be considered as taxable income of the domestic corporation in the year of actual receipt or remittance, subject to surcharge, interest, and penalties, as applicable.
- ▶ For this purpose, to avail of the income tax exemption, the domestic corporation shall:
 1. Attach a "Sworn Statement", following the template provided in these Regulations (Annex A), to the Annual Income Tax Return (AITR) pertaining to the taxable year in which the foreign-sourced dividends were received; and
 2. Attach to the AITR pertaining to the year immediately following the year of receipt of the foreign-sourced dividends a "Sworn Declaration" using template provided herein (Annex B).

Compliance with the above requirements is sufficient to avail of the income tax exemption. However, in case of partial or non-utilization of the foreign-sourced dividends, the domestic corporation shall pay the corresponding income tax due thereon, inclusive of surcharge, interest and penalties, by amending the AITR filed for the particular period. If the amendment is already prohibited due to existence of audit, the income tax shall be paid using payment form (BIR Form 0605).

- Further, no credit or deduction under Section 34(C) of the Tax Code shall be allowed for any taxes of foreign countries paid or incurred by the domestic corporation in relation to the exempt foreign-sourced dividends. Finally, any taxes of foreign countries paid or incurred by the domestic corporation in relation to the exempt foreign-sourced dividends shall be disregarded in computing the limitations provided under Section 34(C)(4) of the Tax Code.

RMC No. 45-2023 publishes the full Text of FIRB Advisory No. 004-2023 clarifying the issues covering the transfer of registration with the BOI of RBEs in the IT - BPM Sector.

RMC No. 45-2023 dated 19 April 2023

Among the salient clarifications of the FIRB Advisory are summarized below. Please refer to the full text of FIRB Advisory No. 004-2023 for the complete Q&A.

Question		Clarification
Q1.	Can IT-BPM projects registered with other IPAs and located in economic or freeport zones, from 15 September 2022 onwards, register with BOI under FIRB Resolution Nos. 26-2022 and 33-2022?	A1. No. All registration of new or expansion projects from 15 September 2022 onwards shall be with BOI if the enterprises wish to avail of the 100% work-from-home (WFH) arrangements. Prior to this period, IT-BPM projects may register with the BOI based on FIRB Resolution Nos. 26-2022 and 33-2022.
Q2.	What is the penalty if an IT-BPM project implements WFH arrangements in 2023, but fails to register with the BOI by 31 January 2023?	A2. 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) as specified in FIRB Advisory No. 003-2023, and Bureau of Internal Revenue (BIR) Revenue Memorandum Circular Nos. 23-2022, 39-2022, and 120-2022. This, however, is without prejudice to the suspension or withdrawal of tax incentives or cancellation of the corresponding Certificate of Registration, upon further assessment by the concerned IPAs or the FIRB.
Q3.	How is the penalty on RCIT, in case of non-compliance with Section 309 of the Tax Code, as amended, computed?	A3. Per FIRB Advisory No. 003-2023, any penalty shall be based on 100% or the entirety of the RCIT for the month/s of non-compliance and not merely on the percentage of non-compliance.

Question		Clarification
Q4.	Can the BOI Certificate of Registration (BOI-COR) be amended after 31 January 2023 in order to include additional projects?	<p>A4.</p> <p>No, the BOI-COR cannot be amended after 31 January 2023 to include expansions or new projects in order to allow these new projects or expansions to implement WFH arrangements.</p> <p>New or expansion projects or activities of IT-BPM RBEs should be separately registered with the BOI in order to avail of WFH arrangements.</p>
Q6.	How can we avail of the fiscal incentives if BOI has not yet issued the BOI-COR?	<p>A6.</p> <p>The BIR and Bureau of Customs (BOC) shall accept the official receipt as proof that the BOI-COR will be secured by the company. Generally, in lieu of the BOI-COR, the BOI-issued official receipt shall be accepted as an alternative.</p>
Q8.	Please clarify if the registration with BOI is a transfer of registration or an additional registration in order to institutionalize the conduct of WFH arrangements by IT-BPM RBEs located in economic zones or freeport zones.	<p>A8.</p> <p>The registration with the BOI will be an additional registration on top of the IT-BPM RBE's existing registration. The registration with BOI will be the basis for fiscal incentives, while the registration with the concerned or original IPA will be the basis for non-fiscal incentives and the corresponding terms and conditions of registration.</p> <p>As such, IT-BPM RBEs must continue to abide by regulations set by both IPAs to maintain their fiscal and non-fiscal incentives.</p>
Q10.	What is the process of requesting the Certificate of Authority to Import (CAI), Certificate of Entitlement to Tax Incentives (CETI), and VAT Zero- rating certificate if the RBE is already BOI registered?	<p>A10.</p> <p>The CAI, CETI, and VAT Zero-rating certificate shall still be processed with the original or concerned IPA, using their existing processes. Nonetheless, please coordinate with your concerned IPA for any additional reportorial requirements or for any adjustments in existing process flows.</p>
Q35.	Is there a limitation as to the period of enjoyment of WFH arrangement once an IT-BPM project is registered with the BOI?	<p>A35.</p> <p>There is no limit as to the period of enjoyment of the WFH arrangement once a project is registered with the BOI. Registration with the BOI under FIRB Resolution Nos. 26-2022 and 33-2022 is a permanent solution that enables RBEs located in economic zones or freeport zones to conduct 100% WFH arrangements indefinitely.</p>

RMC No. 46-2023 publishes the full text of FIRB Advisory No. 006-2023 regarding clarifications on the supplemental guidelines on the registration with the BOI of RBEs in the IT - BPM Sector.

RMC No. 46-2023 dated 19 April 2023

- ▶ Discussed in the abovementioned advisory, among others, are:
 1. The policies and guidelines on the movement of capital equipment and other assets within and outside the economic zones and/or Freeport zones; and
 2. Concerns on expansion projects under PEZA.
- ▶ Among the salient clarifications of the FIRB Advisory are summarized below. Please refer to the full text of FIRB Advisory No. 006-2023 for the complete Q&A.

Question		Clarification	
Q1:	Are all assets of the IT-BPM RBE covered by these regulations?	A1:	No. Only the capital equipment and other assets related to IT-BPM project or activity registered with the BOI and are to be used to implement WFH arrangements shall be covered by these regulations.
Q2:	What shall be the coverage of the tax exemption indorsement (TEI) to be secured from the Department of Finance-Revenue Office (DOF-RO)?	A2:	Based on Section E of FIRB AO No. 001-2023, as amended by FIRB AO 003-2023, only assets intended to be moved out of or currently outside the economic zones and/or freeport for WFH arrangements shall be required to secure TEI. Kindly note that existing goods will be covered by a blanket TEI per project, covering existing goods that were imported as of 31 January 2023. For new importations starting 1 February 2023, the TEI shall be processed per project per shipment.
Q3:	If a foreign-supplied intangible asset/software will not pass through the BOC/any port (e.g., purely internet-based), will the TEI no longer be required?	A3:	Yes. The TEI will no longer be required. The TEI only covers goods that are physically imported and processed by the BOC as imports.
Q4:	If the intangible asset/software is a component of a tangible/physical asset (e.g., part of equipment or machinery), will the related TEI be secured?	A4:	Yes. The TEI must be secured. As the intangible asset/software forms part of the imported asset, the cost of such intangible asset/software will be embedded in the purchase price of the tangible/physical asset will be processed by the BOC.

Question		Clarification	
Q5:	Can IT-BPM RBEs implement WFH arrangements while still processing the blanket TEI?	A5:	<p>Yes, WFH arrangements are already permitted upon registration with the BOI. However, during the pendency of the issuance of the TEI, the movement of goods from the economic zones and/or freeport zones, in order to operationalize the WFH arrangements, shall only be allowed upon successfully securing a provisional goods declaration (PGD) and submitting a notarized undertaking</p>
Q6:	What is the duration of the bond-free period for existing assets?	A6:	<p>As provided by FIRB Resolution No. 33-2022, and as extended by FIRB Resolution No. 012-23, the bond-free transition period shall run from 1 January 2023 to 30 June 2023.</p>
Q7:	What is the recourse of IT-BPM RBEs if they are still securing the TEI for existing assets by the end of the bond-free transition period?	A7:	<p>After the bond-free transition period, the goods may still be allowed to be moved outside the economic zone or freeport zone provided that a PGD has been secured and the specific and sufficient surety bond has been posted, as approved by the BOC.</p> <p>However, in no case shall the TEI of existing assets currently outside the economic or freeport zone be secured later than one (1) year from the issuance of FIRB AO No. 003-2023 or the end of the bond-free transitory period, whichever comes later.</p>
Q15:	Do IT-BPM RBEs need to secure staging Bill of Lading (BL)/dummy BL if all WFH assets to be moved outside the economic zone or freeport zone are locally purchased equipment?	A15:	<p>The staging BL/dummy BL is a requirement to process the TEI for imported existing goods. If the WFH assets to be moved outside the economic or freeport zone are locally purchased equipment, then the staging BL/dummy BL does not need to be secured</p>

Question		Clarification	
Q17:	Is the staging BL/dummy BL only required for existing assets?	A17:	<p>Yes, the staging BL/dummy BL is only required to secure the blanket TEI for existing assets. New importations starting 1 February 2023 shall be covered by an actual signed and dated Import BL/ Air Waybill. Please refer to Annex A of FIRB AO No. 001-2023 for the distinction between requirements for existing assets and new importations starting 1 February 2023.</p>
Q18:	What is the process for new importations starting 1 February 2023?	A18:	<p>As amended by FIRB AO No. 003-2022, new importations of ITBPM RBEs shall undergo the existing/status quo clearance procedures and documentary requirements of their concerned IPA in order to release the goods from BOC custody. The additional step of securing a TEI from the DOF-RO will only arise when the IT-BPM RBE requests for the movement of goods from the economic zone or freeport zone.</p>
Q21:	Is submission of invoices and receipts mandatory in order to prove that local purchases are entitled to VAT incentives?	A21:	<p>In general, locally purchased goods used for WFH arrangements, which were subject to VAT zero-rating, should be supported by the related VAT zero-rating certificate issued by the concerned IPAs. Given the need to balance government control procedures and the ease of doing business, risk-based validation should be applied whenever possible.</p>
Q27:	Are transferee IT-BPM RBEs registered with PEZA and BOI still required to maintain an office inside the economic and/or freeport zone?	A27:	<p>Based on PEZA Memorandum Circular No. 2022-067, the transferee RBEs are still required to maintain an office inside PEZA-registered IT Centers/Buildings. Failure to comply shall result in the cancellation of its registration with PEZA as an IT Enterprise and subsequently, its registration with BOI.</p>

RMC No. 47-2023 reiterates the proper time of remittance of withholding taxes by NGAs, LGUs, and GOCCs.

RMC No. 47-2023 dated 3 May 2023

- ▶ The RMC clarifies that the proper time of withholding and remittance of the tax is as required under RR no. 12-2001, which amended Section 2.57.4 of RR No. 2-1998. The said RR provides that the obligation of the payor to deduct and withhold the tax arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes.
- ▶ The RMC also provides that the accrual basis of accounting was already prescribed by the Commission on Audit in the Government Accounting Manuals for NGAs and LGUs since 2002, pursuant to the Philippine Public Sector Accounting Standards that are harmonized with the International Public Sector Accounting Standards.

RMC No. 48-2023 circularizes the availability of the additional features and functionalities of online application for registration information updates and other online facilities for registration-related transactions through the ORUS.

RMC No. 48-2023 dated 5 May 2023

- ▶ Starting 28 April 2023, the following additional features and functionalities related to registration information shall be available through ORUS:

Features	Application Details
Business registration	<ul style="list-style-type: none">▶ Conversion of non-business taxpayers (e.g., Employee, Executive Order 98) with existing TIN to business taxpayers▶ Registration of new branch▶ Registration of new facility
Update of registration (with Certificate of Registration generation)	<ul style="list-style-type: none">▶ 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

RMC No. 49-2023 updates the floor price of cigarettes, heated tobacco, vaporized nicotine and non-nicotine products and reiterates the imposition of corresponding penalties, sanctions and liabilities for noncompliance.

RMC No. 49-2023 dated 25 April 2023

Floor Price or Minimum Price

- ▶ Floor Price is defined as the minimum retail price set by the BIR at which Cigarettes, Heated Tobacco, Vaporized Nicotine and Non-Nicotine products may be sold, taking into account the sum of their excise tax, value added tax, and reasonable production cost.
- ▶ Provided hereunder is the updated floor price for the following tobacco products:

A. CIGARETTES

Packaging	Content per Packaging	Production Cost/Total Landed Cost	Excise Tax	VAT	Total Tax	Floor Price
Pack	20 sticks	P42.32	P60.00	P12.28	P72.28	P114.60
Ream	10 packs	P423.20	P600.00	P122.80	P722.80	P1,146.00

B. HEATED TOBACCO PRODUCTS

Packaging	Content per Packaging	Production Cost/Total Landed Cost	Excise Tax	VAT	Total Tax	Floor Price
Pack	20 sticks	P75.00	P32.50	P12.90	P45.40	P120.40

C. VAPOR PRODUCTS

C.1 Nicotine Salt or Salt Nicotine

Packaging	Pack/Fill	Content per Packaging	Production Cost/Total Landed Cost	Excise Tax	VAT	Total Tax	Floor Price
Pod	1	2ml	P74.57	P104.00	P21.43	P125.43	P200.00
Pod	1	4ml	P108.94	P208.00	P38.03	P246.03	P354.97

C.2 Conventional 'Freebase' or 'Classic' Nicotine

Packaging	Pack/Fill	Content per Packaging	Production Cost/Total Landed Cost	Excise Tax	VAT	Total Tax	Floor Price
Bottle	1	10ml	P100.00	P60.00	P19.20	P79.20	P179.20
Bottle	1	30ml	P180.00	P180.00	P43.20	P223.20	P403.20

- Selling of tobacco products at a price lower than the combined excise and value-added taxes imposed under the law shall be prohibited. The seller of such products shall be punished with the corresponding fine under the pertinent provisions of the 1997 NIRC, as amended.

Penalties

- Any violation of the floor prices prescribed above shall be subject to the corresponding penalties under the pertinent provisions of the 1997 NIRC, as amended, to wit:

"SEC. 145. Cigars and Cigarettes: - xxx

"Selling of tobacco products at a price lower than the combined excise and value-added taxes imposed under the law shall be prohibited. The seller of such products shall be punished with a fine of not less than 10 times the amount of excise plus value-added taxes due but not less than P200,000.00 nor more than P500,000.00, and imprisonment of not less than four years but not more than six years."

"SEC. 254. Attempt to Evade or Defeat Tax. - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than P500,000.00 but not more than P10,000,000.00 and suffer imprisonment of not less than six years but not more than 10 years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes."

"SEC. 263-A. Selling of Heated Tobacco Products and Vapor Products at a Lower Price than the Combined Excise and Value-added taxes. - Any person who sells heated tobacco products and vapor products at a price lower than the combined excise and value-added taxes shall be punished with a fine of 10 times the amount of excise tax plus value-added tax but not less than P100,000.00, and imprisonment of not less than two years but not more than four years."

- ▶ In addition to the above penalties, the provisions of Section 263 and 265 of the 1997 NIRC, as amended, shall likewise be applied.
- ▶ Section 13 of JAO No. 21-01, Series of 2022, provides; "E-commerce platforms, e-marketplaces, and the like, shall be treated, and shall be held liable, in the same manner as online sellers, merchants, and e-retailers, when the latter commits any violation of the laws implemented by these rules."

RMC No. 52-2023 clarifies that VAT-registered persons may continue to file and pay their VAT liabilities on a monthly basis and use BIR Form No. 2550M for the purpose.

RMC NO. 52-2023 dated 10 March 2023

- ▶ While the Tax Code now mandates the filing of VAT returns and payment of the corresponding VAT liabilities on a quarterly basis, VAT-registered persons may continue to file and pay the VAT on a monthly basis and still use BIR Form No. 2550M. In this regard, the procedures and guidelines set forth in RR Nos. 16-2005, 6-2014, RMC No. 68-2005 and other related revenue issuances, regarding the use of BIR Form No. 2550M shall continue to apply.
- ▶ It bears emphasis that if the VAT-registered person opts to switch from filing the VAT return and paying tax on a monthly basis using BIR Form No. 2550M to quarterly filing using BIR Form No. 2550Q, or vice versa, no penalties shall arise. However, the filing of BIR Form No. 2550Q and payment of VAT must be made within the period provided under the Tax Code which is within twenty-five (25) days following the close of each taxable quarter. As to the monthly filing of BIR Form No. 2550M, there shall be no prescribed deadline thereof.

RMC No. 53-2023 provides clarifications on the entitlement of Economic Zone Developers and Operators to the VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity.

RMC NO. 53-2023 dated 11 May 2023

- ▶ The said RMC includes a copy of Board of Investments (BOI) MC No. 2022-003 dated 1 June 2022, which amended the Specific Guidelines of Activities in Support of Exporters under the 2020 Investment Priorities Plan (IPP), also known as the transitional Strategic Investment Priority Plan (SIPP) for the information and guidance of all concerned.
- ▶ The BOI MC included the development and operation of economic zones; and industrial parks and buildings for exporters, as "Activities in Support of 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. Economic zones and industrial parks shall have infrastructure such as paved roads, power system, water supply, drainage system, sewerage treatment facilities, pollution control systems, communication facilities, and other infrastructure/facilities needed for the operation of exporters located therein.

This also covers the development and management of new buildings located outside NCR, declared as an economic zone or within export or Freeport zones, with a minimum contiguous land area of 10,000 square meters with the following features:

- ▶ *High-speed fiber-optic telecommunication backbone and high-speed international gateway facility or wide-area network (WAN); or any high-speed data telecommunication system that may become available in the future;*
- ▶ *Clean, uninterruptible power supply;*
- ▶ *Computer security and building monitoring and maintenance systems (e.g., computer firewalls, encryption technology, fluctuation controls); and*
- ▶ *Any other requirements as may be determined by the Board of the concerned IPAs.*

At least 70% of the leasable/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 under Section 293 (M) of the CREATE Act will not be entitled to the ITH incentive.

Phased development of an economic zone or industrial park may be allowed, provided the whole project is completed within five years unless otherwise approved by the Board of the concerned IPA.

These amendments shall apply to all projects qualified under the CREATE Act."

- ▶ Under this RMC, the ecozone developer and operator may be classified as export enterprise if it meets the qualifications stated above, hence, entitled to VAT incentives under the CREATE Act.
- ▶ Those that will not qualify based on the amended guidelines, the ecozone developer or operator will be classified as a **domestic market enterprise** under Item D(I)(8)(j) of the General Policies and Specific Guidelines to Implement the 2020 IPP which covers the development of domestic industrial zones, as circularized by the BOI thru Memorandum Circular No. 2021-001, hence, not entitled to the VAT incentives under the CREATE Act.

Banks and Other Financial Institutions

Amendments to the Currency Rate Risk Protection Program (CRPP) Facility and its implementing Guidelines

BSP Circular No. 1172 amends currency rate risk protection program facility and its implementing guidelines.

BSP Circular No. 1172 dated 18 April 2023

The Monetary Board, in its Resolution No. 448 dated 30 March 2023, approved the following amendments to the implementing guidelines of the Currency Rate Risk Protection Program (CRPP) Facility under Section 629 and Appendix 132 of the Manual of Regulations for Banks (MORB).

Section 1. Section 629 of the MORB is hereby amended to read, as follows:

629 THE CURRENCY RATE RISK PROTECTION PROGRAM (CRPP) FACILITY

The CRPP Facility is a non-deliverable USD/PHP forward contract (NDF) between the BSP and a UB/KB (the "Bank") in response to the request of bank clients desiring to hedge their eligible foreign currency obligations/transactions. Transactions under the CRPP facility are considered part of banks' Generally Authorized Derivatives Activities (GADA).

Under the CRPP Facility, only the net difference between the contracted forward rate and the prevailing spot rate shall be settled in pesos at maturity of the contract. Should the eligible obligation/transaction be denominated in a foreign currency other than the US dollar, the CRPP contract shall be denominated in the US dollar equivalent using the exchange rate indicated in the Bangko Sentral Reference Exchange Rate Bulletin on deal date.

Coverage. Eligible obligations/transactions under the CRPP Facility shall refer to unhedged foreign currency obligations/transactions in amounts of not less than USD50,000.00 which are current and outstanding as of date of application. Past due foreign currency obligations/transactions are not eligible. The maximum tenor of the CRPP contracts is three months.

For this purpose, unhedged obligations/transactions shall refer to those without outstanding hedge either through forward contracts, options or matched foreign currency assets.

Partially hedged foreign exchange obligations/transactions shall be evaluated on a case-to-case basis.

The following transactions with payments/settlement/maturity within three months from the date of application are considered eligible foreign exchange obligations/transactions:

- ▶ BSP-approved/registered/reported private sector/public sector/publicly-guaranteed private sector foreign/foreign currency loans/borrowings;
- ▶ Foreign merchandise trade transactions provided that, the transactions are duly compliant with relevant provisions, including documentary requirements, stipulated under the Manual of Regulations on Foreign Exchange Transactions (FX Manual);
- ▶ Non-trade current account and resident to resident foreign exchange (FX) transactions enumerated under Appendix 156, provided, that the transactions are duly compliant with relevant provisions, including documentary requirements, stipulated under the FX Manual; and
- ▶ Outward investments provided that, the transactions are duly compliant with relevant provisions, including documentary requirements, stipulated under the FX Manual.

Supervisory enforcement actions.

In the performance by the BSP of the post-verification of the CRPP contracts through on-site examination or off-site verification to ascertain the eligibility of the underlying foreign currency obligation/transaction with the CRPP Facility, the following enforcement actions and procedures shall be employed:

- ▶ Pre-termination Requested by the Bank
 1. Should the post-verification by BSP of pre-termination by the Bank show no proof of actual payment of the foreign exchange (FX) obligation/transaction, or the manner of payment was through the renewal of the loan under a new promissory note or by another form of FX obligation/transaction, the BSP shall debit the Bank's regular demand deposit account with the BSP for the amount received by the Bank from BSP as a result of the pre-termination of the CRPP contract, if any, plus interest calculated using BSP's overnight lending rate from the date the amount was received from the BSP to the date the amount is returned to the BSP.
 2. Should the post-verification by BSP show that the underlying FX obligation/transaction of a CRPP contract pre-terminated by the Bank is ineligible, the BSP shall debit the Bank's regular demand deposit account with the BSP for the amount received by the Bank from BSP as a result of the pre-termination of the CRPP contract, if any, plus interest calculated using BSP's overnight lending rate from the date the amount was received from the BSP to the date the amount is returned to the BSP.
- ▶ Pre-termination Requested by the BSP
 1. The BSP shall pre-terminate existing CRPP contracts when the underlying FX obligation/transaction is found ineligible during post-verification by the BSP. A monetary penalty of P30,000.00 per calendar day shall be imposed on the Bank from the contract date up to pre-termination date.

2. The BSP shall also pre-terminate CRPP contracts when the underlying FX obligation/transaction is paid before the maturity of the CRPP contract and the client failed to request for pre-termination. A monetary penalty of P30,000.00 per calendar day shall be imposed from the date of payment of the underlying FX obligation/transaction up to pre-termination date.
 - ▶ Post-verification of Matured Contracts
 1. Should the post-verification of matured contracts show proof that the supporting FX obligation/transaction is fictitious or ineligible under the CRPP Facility, a monetary penalty of P30,000.00 per calendar day shall be imposed on the Bank for the whole duration of the contract. In addition, the BSP shall debit the Bank's regular demand deposit account with the BSP for any gains received by the Bank from the BSP, if any, plus interest calculated using BSP's overnight lending rate from the date the contract matured to the date the amount is returned to the BSP.
 - ▶ Other Sanctions
 1. In addition to the foregoing prescribed penalties, and subject to the confirmation by the Monetary Board, any violation of the provisions of this Section, including willful delay in the submission, non-submission and/or willful making of a false or misleading statement in the certification required to be submitted to the BSP under Sections A.5 and F.4 of Appendix I32, shall constitute grounds for the imposition on the Bank of the following:

Section 2. Appendix 132 of the MORB is hereby amended, to read, as follows:

Implementing Guidelines of The Currency Rate Risk Protection Program (CRPP) Facility (Appendix to Section 629)

A. Mechanics on the availment of the CRPP facility

- ▶ Qualified applicants shall file with a UB/KB (the "Bank"): (a)Application for the BSP Currency Rate Risk Protection Program (The "CRPP Facility") certifying that the underlying foreign currency obligation/transaction qualifies under the CRPP Facility and that such obligation/transaction is unhedged (Annex I); and (b) supporting documents in Item "B" hereof.
- ▶ The Bank, after reviewing the application and finding the same in order, shall request the Domestic Market operations Department (DMOD) under the Financial Markets to quote the CRPP rates at least five minutes after the close of trading of the USD/PHP market. Such quote will be made available for one hour after the close of trading (or up to 5:00 P.M if trading closes at 4:00 P.M.). Each application shall be dealt with by DMOD separately.
- ▶ The bank shall submit in hardcopy or through electronic means to the appropriate supervising department of the BSP not later than 5:00 P.M. of the banking day following the date of availment of the CRPP contract:

Upon first application of client, Certification and Deed of Undertaking on the Availment of CRPP Transactions with the BSP (Annex 2) and Details of Availment of CRPP Transactions with Clients (Annex 2a). Said certification and deed of undertaking shall be jointly signed by the Bank's authorized signatories who shall at least be a senior vice president or officer of equivalent rank and the compliance officer. The Bank shall notify the BSP in writing of any change in the Bank's authorized signatory/ies specifying that the commitments under the previously executed Certification and Deed of Undertaking per client shall be assumed by the new authorized signatory/ies.

B. Documentary requirements

On or before the deal date, the qualified applicant shall submit to the Bank the following documents:

- ▶ For BSP-approved/registered/reported private sector/public sector/publicly-guaranteed private sector foreign/foreign currency loans/borrowings:
 1. Duly accomplished CRPP application form, bearing the Bangko Sentral Registration Document (BSRD) Number and BSP-IOD Debt Account Number (where applicable); and
 2. Proof of reporting/approval/registration.
- ▶ For: (a) foreign merchandise trade transactions; (b) non-trade current account transactions; (c) resident to resident FX transactions; and (d) outward investments:
 1. Duly accomplished CRPP application form; and
 2. Applicable supporting documents/information under the FX Manual.

It is understood that the FX obligations/transactions to be covered by the CRRP Facility shall not exceed the amounts of the underlying FX obligations/transactions.

On or before the settlement/maturity date, the qualified applicant shall likewise submit to the Bank a proof showing the amount to be paid (e.g., billing statement) or payment of the underlying FX obligation/transaction.

C. Tenors

The maximum tenor of the CRPP contracts is three months but not to exceed the remaining tenor of the underlying FX obligation/transaction. At the expiration of the contract, the qualified applicant has the option to re-avail the CRPP Facility for the remaining eligible unpaid FX obligation/transaction (e.g., interest or principal amortization). A new application and supporting documents are required for each CRPP re-availment.

D. Pricing

The DMOD will provide forward rates for tenors up to three months. Pricing of the non-deliverable forward (NDF) contract under the CRPP Facility will be based on this formula:

$$\text{NDF Rate} = \frac{\text{Spot Rate} \times [1 + (\text{Peso interest Rate}^* \times \text{Tenor}/360)]}{1 + (\text{US Dollar Interest Rate}^* \times \text{Tenor}/360)}$$

**Peso and US Dollar Interest Rates will be determined by the DMOD*

The CRPP facility will be available for one hour after the close of trading of the USD/PHP market. The DMOD shall provide CRPP quotes to banks at least five minutes after the close of the USD/PHP market. The DMOD will use the relevant Bankers Association of the Philippines (BAP) weighted average rate for spot transactions or the weighted average rate of the last five transactions mapped before the close of trading, whichever is higher, on deal date as the Spot Rate. If the relevant BAP weighted average rate for spot transactions is not available, DMOD will use the weighted average rate of the last five transactions mapped at the BAP.

E. Pre-Termination of CRPP Contract

- ▶ Pretermination requested by client

Pre-termination of a CRPP contract shall be allowed if the corresponding FX obligation/transaction will be paid in full or is in default. Pretermination will also be allowed if a portion of the underlying FX obligation/transaction of the CRPP contract is paid. The manner of prepayment should not be done through renewal of the loan under a new promissory note or by another form of FX obligation/transaction.

- ▶ Pre-terminated CRPP contracts

Underlying FX obligations/transactions of pre-terminated CRPP contracts shall no longer be eligible for the CRPP Facility.

- ▶ Reporting requirements on the pre-termination

The Bank shall submit the Certification on the Pre-termination of CRPP Transaction with the BSP (Annex 3) and Details of Pre-terminated CRPP contracts with clients (Annex 3a) to the appropriate supervising department of the BSP not later than 5:00 P.M. of the banking day following the date of pre-termination of the CRPP contract. Said certification shall be jointly signed by the Bank's authorized signatories who shall at least be a senior vice president or officer of equivalent rank and the compliance officer.

The Bank shall also keep the relevant documentary requirements supporting the pre-termination of GRPP contracts and make these available for inspection upon request by the BSP during on-site examination and off-site verification, as warranted.

Section 3. Appendix 7 of the MORB is hereby amended to include the reportorial requirements of the CRPP Facility. Reference can be sought in the BSP website for the full presentation.

Section 4. The amended templates covering reportorial requirements of the CRPP Facility and the appendix covering the list of eligible non-trade current account and resident to resident FX transactions are attached. as follows:

Annex	Report Title
1	Copy of qualified client's Application for the BSP Currency Rate Risk Protection Program (The "CRPP Facility")
2	Certification and Deed of Undertaking on the Availment of CRPP Transactions with the BSP
2a	Details of Availments of CRPP Transactions with Clients
3	Certification on the Pre-termination of CRPP Transactions with the BSP
3a	Details of Pre-terminated CRPP Transactions with the BSP
Appendix	Appendix Title
156	List of Eligible Non-trade Current Account and Resident to Resident FX Transactions under the CRPP Facility

Section 5. This Circular shall take effect 15 calendar days after its publication either in the official Gazette or in a newspaper of general circulation.

Modified Minimum Capitalization of Conventional Banks with Islamic Banking Unit

BSP Circular No. 1173 modifies the minimum capitalization of conventional banks with an Islamic Banking Unit.

BSP Circular No. 1173 dated 19 April 2023

The Monetary Board, in its Resolution No. 493 dated 13 April 2023, approved the modified minimum capitalization requirements for conventional banks with an Islamic Banking Unit (IBU) to afford flexibility in the establishment of IBUs and expand access to Shari'ah-compliant banking products and services for all Filipinos.

Section 1. Section 102 of the Manual of Regulations for Banks (MORB), as amended by Circular No. 1154 dated 14 September 2022, is hereby further amended to introduce the modified minimum capitalization requirements for conventional banks with an IBU under the sub-topic "Establishment of IBs and Islamic Banking Units" and shall now read, as follows:

Section 102. Basic Guidelines in Establishing Domestic banks

Establishment of IBs and Islamic banking units

c. Capitalization. The minimum capitalization requirements for a UB shall apply to an IB. A conventional bank that is a commercial bank (KB) or a subsidiary of a universal or commercial bank (U/KB), which complies with the minimum capital requirements applicable to its respective banking category, may be allowed to operate an IBU within a reasonable transitory period not exceeding five years reckoned from date of BSP approval. Provided that: After the transitory period, the conventional bank's operation of an IBU may be allowed subject to compliance with the minimum capitalization requirement for a UB.

Not later than six months prior to the end of the transitory period, the conventional bank allowed to operate an IBU under the minimum capital requirement applicable to its respective banking category shall submit an acceptable Board-approved capital build-up plan, which shall contain, at the minimum, the IBU's strategies, financial projections (including underlying assumptions), and other relevant information to ensure sustained viability of the Islamic banking operations and the bank's compliance with the minimum capital requirement for a UB, based on the number of branches used in the operations of the IBU. Periodic reports on the status of implementation of its capital build-up plan shall be submitted to the appropriate supervising department of the BSP to assess the bank's continuing compliance with its capital build-up plan. The BSP may deploy appropriate supervisory enforcement actions in accordance with its supervisory enforcement policy under Section 002 to ensure compliance with this Section.

IBs may take the necessary steps to have their shares of stock listed in any duly registered stock exchange.

d. Governance

Section 2. This Circular shall take effect fifteen calendar days after publication either in the Official Gazette or in a newspaper of general circulation.

Availability of the Currency Rate Risk Protection Program (CRRP) Facility

BSP Circular Letter CL-2023-026 circularizes the availability of the currency rate risk protection program facility.

BSP Circular Letter CL-2023-026 dated 18 April 2023

Pursuant to BSP Circular No. 1014 dated 24 September 2018, the CRPP Facility is a continuing facility that offers a non-deliverable USD/PHP forward contract (NDF) between the BSP and a UB/KB in response to the request of bank clients who wish to hedge their eligible foreign currency obligations.

In 2022, the Philippine peso depreciated, in line with comparable regional peers, amid worries over aggressive interest rate hikes by the US Federal Reserve, and concerns over global economic slowdown following Russia's invasion of Ukraine, as well as the imposition of tighter restrictions in China. As such, due to the possibility of renewed depreciation pressure in the peso following the continued interest rate hikes by the Fed, we would like to remind all UKBs that the CRPP facility remains open. Bank clients who wish to hedge their eligible foreign currency obligations from foreign exchange volatility through the CRPP may contact their respective banks.

Banks that wish to avail of the CRPP Facility shall adhere to the implementing guidelines set out under BSP Circular No. 1015 series of 2018, as amended by BSP Circular No.1172 series of 2023.

Issuance of Documents by the BSP/Registering AABs in Electronic Form

BSP Circular Letter CL-2023-027 informs the public that the BSP shall no longer issue hardcopies of electronically issued documents.

BSP Circular Letter CL-2023-027 dated 24 April 2023

Pursuant to Circular No. 1171 dated 29 March 2023 on amendments to foreign exchange (FX) regulations, it is hereby clarified that:

- For documents issued by the BSP in electronic form starting 27 March 2020 [e.g., BSP letter-approval, provisional Bangko Sentral Registration Document (BSRD)], the BSP shall no longer issue original hardcopies to replace the electronically issued BSP documents (including provisional BSRDs). Said documents shall remain valid even after the period covered by Circular No. 1080 dated 27 March 2020.

Nonetheless, AABs/AAS forex corps shall verify with the BSP-International Operations Department (IOD) the authenticity of said BSP documents issued in electronic form submitted by the client prior to FX sale/deposit of funds to peso deposit accounts of non-residents as provided under item 4 of Part One, Chapter I of the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended.

- Upon effectivity of Circular No. 1171 on 09 May 2023, registering AABs for investments under Section 37 of the FX Manual shall issue documents (i.e., BSRD, BSRD Letter Advice) on behalf of the BSP only in electronic form. The authenticity of said documents shall not be subject to the required verification with the BSP-IOD as provided under item 4 of Part One, Chapter I of the FX Manual.

Relative thereto, all registering AABs shall request for details on the BSRD number from the BSP-IOD at telephone nos.: (+632) 8708-7110 and (+632) 8708-7106 and/or via email: iod-pid@bsp.gov.ph, cc: sladan@bsp.gov.ph and labayorc@bsp.gov.ph.

Further, existing BSRDs issued in original hardcopy by registering AABs may be converted to electronic/digitized format; Provided that: (a) all the required information will be included in the electronic/digitized copy; and (b) registering AABs shall submit a notice to the BSP-IOD through above email address indicating therein, among others, the list of BSRD numbers and name of investors concerned.

Guidance Paper for an Effective Anti-Money Laundering/Countering Terrorism and Proliferation Financing (AML/CTPF) Transaction Monitoring System

BSP Memorandum No. M-2023-013 circularizes the guidelines on the design and continuing reinforcements of transaction monitoring and reporting systems.

BSP Memorandum No. M-2023-013 dated 20 April 2023

In Resolution No. 490 dated 13 April 2023, the Monetary Board approved the Guidance Paper on transaction monitoring system.

The Guidance Paper presents the key results of the thematic review on transaction monitoring system. It aims to provide sound practices and practical insights covering transaction monitoring system and other related facets, such as ongoing customer due diligence, alerts/case management, and suspicious transaction investigation and reporting, across different types of BSFIs.

BSFIs are expected to consider this Guidance Paper in the design and continuing reinforcement of their transaction monitoring and reporting systems as a key component of their overall AML/CTPF framework.

The full copy of the Guidance Paper is attached in the memorandum that can be accessed thru the BSP website.

Reminder to Ensure Subscriber Identity Module (SIM) Registration of BSFI Clients

BSP Memorandum No. M-2023-014 enjoins the financial institutions to register their SIM cards.

BSP Memorandum No. M-2023-014 dated 22 April 2023

In support of Republic Act No. 11934 "Subscriber Identity Module (SIM) Registration Act", the BSP enjoins BSFIs to promptly remind their clients to comply with the SIM registration requirement within the prescribed deadline of 26 April 2023 or 180 days from the aforementioned law's effectivity date.

Under the said law, failure to register will result in the automatic deactivation of existing SIM cards. The deactivation may cause unnecessary interruptions in the access and use by a client of a BSFI's electronic payments and financial services, such as hindering the generation of one-time password for access and transaction authorization, and the issuance of advisories and transaction alerts.

BSFIs are advised to take proactive measures to ensure that their clients are aware of and comply with the registration requirement on or before said deadline in order for their access to payments and financial services to proceed smoothly.

Guidelines Covering Verification of Authenticity of BSP Documents Issued in Electronic Form under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended

BSP Memorandum No. M-2023-015 dated 24 April 2023 provides guidelines on the verification of authenticity of BSP-issued electronic documents.

BSP Memorandum No. M-2023-015 dated 24 April 2023

Pursuant to Circular No. 1117 dated 29 March 2022 on amendments to foreign exchange (FX) regulations, the following guidelines shall apply to the verification of authenticity of BSP-issued documents in electronic form under item 4 of Part One, Chapter I of the FX Manual:

► Guidelines

1. Starting 27 March 2020 and henceforth, all BSP-issued documents [e.g., BSP letter-approval, Bangko Sentral Registration Document (BSRD)] covered by the FX Manual shall be issued in electronic form unless otherwise indicated therein.

2. AABs/AAB forex corps shall verify with the BSP-International Operations Department (IOD) via email the authenticity of BSP-issued documents in electronic form submitted by clients prior to FX sale/deposit of funds to peso deposit accounts of non-residents, indicating therein the BSRD No./Reference No., date issued, parties concerned (e.g., borrower/creditor, investor/ investee), and amount/shares registered/approved (as applicable).
3. Such request for verification shall be sent to the following email addresses with subject "Verification of Authenticity of Electronically Issued BSP Document":

BSP-issued document	Email Address	Contact Numbers
On public sector foreign/foreign currency loans/ borrowing	iod-ogl@bsp.gov.ph cc: rquintos@bsp.gov.ph; cervantesam@bsp.gov.ph; parciajm@bsp.gov.ph; and caledajr@bsp.gov.ph	(+632) 5306-2528
On private sector foreign/foreign currency loans/ borrowing	iod-loans@bsp.gov.ph cc: jevangelista@bsp.gov.ph; eevangelistajr@bsp.gov.ph; ndelacena@bsp.gov.ph; and geronimojb@bsp.gov.ph	(+632) 5306-2717 (+632) 8708-7097 (+632) 8708-7108
On investments	iod-investments@bsp.gov.ph cc: sladan@bsp.gov.ph; and labayorc@bsp.gov.ph	(+632) 8708-7684
On peso deposit accounts of non-residents	iod-ipds@bsp.gov.ph cc: antoniocc@bsp.gov.ph; and limae@bsp.gov.ph	(+632) 5306-2645
On trade transactions	iod-ipds@bsp.gov.ph cc: antoniocc@bsp.gov.ph; and limae@bsp.gov.ph	(+632) 5306-2645
On other FX transactions	iod-ipds@bsp.gov.ph cc: antoniocc@bsp.gov.ph; and limae@bsp.gov.ph	(+632) 5306-2645

4. To further expedite BSP-IOD's action on the matter, AABs/AAB forex corps are hereby advised to call the BSP-IOD Group concerned through the contact numbers provided above after sending the email-request for verification.

Cancelled and Replaced Bangko Sentral Registration Documents (BSRDs)

BSP Memorandum No. M-2023-016 advises that registration of investments of non-residents in resident investee-firms were cancelled and replaced.

BSP Memorandum No. M-2023-016 dated 26 April 2023

The BSP has advised that original BSRDs (issued in hardcopy) and provisional BSRDs (issued in electronic copy) listed in the following link:

https://www.bsp.gov.ph/Price%20Stability/Download%20Section>List_of_Cancelled_and_Replaced_BSRDs.pdf covering registration of investments of non-residents in resident investee-firms were cancelled and replaced from April 2020 to December 2022 due to changes/transfers, etc. in these investments pursuant to the provisions of the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended.

These previously issued BSRDs have been cancelled/replaced and should not be honored if presented for purchase of foreign exchange for capital repatriation or remittance of earnings, pursuant to Section 38 of the FX Manual.

Extension of Deadline for Compliance of BSFI Clients with Subscriber Identity Module (SIM) Registration

BSP Memorandum No. M-2023-017 informs the public that the deadline for compliance with SIM registration has been extended.

BSP Memorandum No. M-2023-017 dated 4 May 2023

The deadline for compliance with Republic Act No. 11934 "SIM Registration Act," has been extended by 90 days, from 26 April 2023 to 25 July 2023.

Given this development and consistent with BSP Memorandum No. M-2023-014 dated 22 April 2023, the BSP reiterates its call for BSFIs to take proactive measures to ensure that their clients are aware of and comply with the SIM registration requirement within the new prescribed deadline in order for their access to payments and financial services to proceed smoothly.

Clarification on the Definition of Infrastructure Projects for Public Use

BSP Memorandum No. M-2022-039 clarifies the definition of infrastructure projects for public use.

BSP Memorandum No. M-2022-039 dated 28 April 2023

The purpose of the memorandum is to clarify the definition of infrastructure projects for public use as indicated in Section 363-A of the Manual of Regulations for Banks (MORB) on Limits on Real Estate Exposures of Universal and Commercial Banks (UBs/KBs).

Below is the full text from the memorandum:

Pursuant to Item "a" of Section 363-A of the MORB, real estate loans shall not include "loans to finance the construction, rehabilitation and improvement of highways, streets, bridges, tunnels, railways, railroad, transport systems, ports, airports, power plants, hydropower projects, canals, dams, water supply, irrigation, telecommunications, land reclamation projects, industrial estates or townships, government buildings and housing projects, public markets, slaughterhouses, warehouses, civil work components of information technology networks and database infrastructure projects, solid waste management, sewerage, flood control, drainage, dredging and other infrastructure projects that are intended for public use" for purposes of compliance with the prudential Real Estate Loan (REL) limit.

Moreover, loans and investments in debt and equity securities, the proceeds of which are used to finance infrastructure projects for public use as described above, are likewise excluded from the composition of (i) real estate exposures for purposes of compliance with the prudential Real Estate Stress Test (REST) limit as required under Item "b" of Section 363-A and Section 363-B of the MORB, and (ii) large exposures in compliance with the large exposures monitoring threshold pursuant to Circular No. 1150 dated 23 August 2022.

For purposes of compliance with the abovementioned prudential requirements, only the loans and investments to finance the construction, rehabilitation and improvement of real estate relating to infrastructure projects that are intended for public use such as fixed assets, permanent structures, immovable facilities or physical improvements thereon shall be excluded from the computation of real estate loans and real estate exposures that are subject to the prescribed REL and REST limits, respectively. Meanwhile, loans and investments to finance the general administration and maintenance of operations of entities operating or working on such infrastructure projects including, among others, the cost of equipment, machineries and the like, as well as the services and related items shall not form part of the items that are allowed to be excluded from the above-mentioned prudential limits, except if the expenditure/cost is needed to build, rehabilitate or improve an infrastructure project for public use and is allowed to be capitalized as part of the cost of the fixed asset, permanent structure, immovable facility, or physical improvement.

In the case of telecommunications and civil work components of information technology networks and database infrastructure projects, these shall pertain to the costs to construct, rehabilitate, and improve the related fixed assets, permanent structures, immovable facilities, or physical improvements thereon such as but not limited to the terrestrial and satellite stations, data center facilities, data recovery sites, or telecommunication towers. However, expenses relating to the general administration and maintenance of operations of telecommunication and/or information technology companies including, among others, their expenditures for equipment and services and related items do not form part of the items that are allowed to be excluded from the prescribed prudential limits on real estate and large exposures.

Board of Investments

BOI Memorandum Circular No. 2023 - 033 provides Recognition of Economic Zone Developers and Operators as Exporters Classified as "Activities in Support to Exporters" under the 2020 Strategic Investment Priority Plan (SIPP).

BOI Memorandum Circular No. 2023 - 033 dated 12 May 2023

BOI MC No. 2022-003 affirms the entitlement of qualified developer/operators of industrial parks and buildings, facilities and utilities enterprises to VAT zero-rating incentive on their local purchases which are directly and exclusively used for the registered project.

Developers/operators, facilities, and utilities enterprises applying for a VAT zero rating certificate shall submit to the Ecozone Development Department (EDD) an affidavit that:

- For Developer/operators and Facilities Enterprises - 70% of the leasable/saleable areas are dedicated to exporters
- For Utilities Enterprises - that 70% of demand for power and 70% of volume for water were supplied to export enterprises

All developers/operators, facilities, and utilities enterprises which filed request for VAT zero-rating certification for 2023 and are compliant with PEZA reportorial requirements including reports required under TIMTA, and have submitted the required affidavit to and cleared by the EDD shall be issued the VAT zero-rating certificate. While those who have not yet filed the request for VAT zero-rating certification may e-mail the accomplished "Request for VAT Zero-Rating Certification", PEZA Form ERD.2.F.006 (Rev.04, 07 November 2022) to odg@peza.gov.ph.

Amendment to the Specific Guidelines on Energy of the 2022 Strategic Investment Priority Plan

To effectively carry out the intent and purposes of EO No. 226, as amended, and Republic Act No. 11534, notice is hereby given that the Board approved the amended in the 2020 IPP, its Specific Guidelines on Energy projects, as follows:

D. Specific Guidelines

I. Preferred Activities

12. Energy

This covers power generation projects utilizing conventional fuels (i.e., coal, diesel, bunker, and natural gas), waste heat and other wastes, and the establishment of battery energy storage systems.

Revenues from sales of electricity sourced by power generation projects utilizing conventional fuels, waste heat and other wastes from the Wholesale Electricity Spot Market (WESM) shall not be entitled to ITH.

Supreme Court Cases

CBK Power Company Limited vs. Commissioner of Internal Revenue

Supreme Court (Third Division), G.R. No. 247918, promulgated 1 February 2023

Registration with the DOE and the BOI as an RE Developer is a pre-requisite for an entity to avail of VAT zero rate on related local purchases under the Renewable Energy Act.

Facts:

CBK Power Company Limited (CBK) is a party to the Build-Rehabilitation-Operate-Transfer (BROT) agreement to rehabilitate, construct, operate, and maintain the Caliraya, Botocan, and Kalayaan hydroelectric power plants and other civil Structures for the purpose of generating electricity for National Power Corporation (NPC).

CBK filed with the Bureau of Internal Revenue (BIR) an administrative claim for VAT refund in the amount of PHP50,060,766.08 arguing that this amount represented unutilized or excess creditable input taxes paid or incurred on its domestic purchases of goods and services, all attributable to zero-rated sales for Calendar Year 2012. Due to the BIR's inaction on the refund claim, CBK elevated the refund claim to the Court of Tax Appeals (CTA).

The CTA ruled that while CBK's administrative and judicial claims for refund were filed on time, it is not entitled for a refund since its "purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are also zero-rated in accordance with Section 15(g) of RA No. 9513 or the Renewable Energy (RE) Act of 2008." Consequently, no output VAT should be shifted to RE Developers such as CBK.

CBK now argues that RA No. 9513 and its implementing rules and regulations (IRR) require an RE Developer to register with the Department of Energy (DOE) and the Board of Investments to be entitled to VAT zero rate. Neither CBK nor its suppliers are registered with the DOE.

Issue:

Is the RE Developer's registration with the DOE a pre-requisite to avail of the VAT zero rate on related local purchases under RA No. 9513?

Ruling:

Yes. Registration with the DOE is a requirement to avail of the said VAT incentive. Otherwise, non-registration would mean that the related local purchases are subject to 12% VAT.

Section 15 of RA No. 9513 states that RE Developers pertain to those which are duly certified by the DOE. Moreover, Sections 25 and 26 provide that RE Developers, local manufacturers, fabricators, and supplies of local-produced RE equipment who register with the DOE shall be issued with a certification by the DOE Renewable Energy Management Bureau. This certification shall serve as basis for RE Developers to avail of the incentives including VAT at zero rate.

Further, the DOE IRR is replete with categorical statements making registration with the DOE a requirement to avail of the incentives. It also requires RE Developers and manufacturers, fabricators, and supplies of local-produced RE equipment to register with the Board of Investments.

Thus, it is not the mere fact that an entity is an RE Developer that makes such an entity entitled to the fiscal incentives under RA No. 9513. Rather, registration with the DOE and the BOI is necessary for the RE Developer to be entitled to VAT zero rate on its local purchases.

There is nothing in the record that would show that CBK registered with the DOE, let alone registered with the BOI and obtained all the necessary certificates. Hence, CBK correctly asserts that its local purchases are subject to 12% VAT.

Petron Corp. v. Commissioner of Internal Revenue

Supreme Court (First Division) G.R. No. 255961, promulgated on 20 March 2023

"Alkylate does not fall under the category of 'other similar products of distillation' as contemplated in Sec. 148 (e) of the 1997 NIRC, as amended, and thus, should not be subject to excise tax."

Facts:

Petron Corporation (Petron) is a domestic corporation engaged in in the business of manufacturing and marketing petroleum products. Petron imported alkylate on various dates which the Bureau of Customs (BOC) subjected to excise tax pursuant to Customs Memorandum Circular No. 164-2012, implementing the Letter from the Bureau of Internal Revenue (BIR), stating that "alkylate which is a product of distillation similar to that of naphtha, is subject to excise tax under Sec. 148 (e) of the Tax Code.

Petron then filed administrative claims for refund of excise tax with the BIR claiming that the foregoing excise taxes were erroneously, wrongfully, illegally and excessively imposed and collected by the BIR through the BOC, which the Court of Tax Appeals denied.

Petron now argues that the principle of strict construction of tax laws granting tax exemptions does not apply to its case since the refund claim is not based on tax exemption but on Sec. 148 (e) of the Tax Code which does not include alkylate as among the excisable articles.

Issues:

1. Is the rule of strict construction of laws granting tax exemptions applicable in this case?
2. Does alkylate fall under the category of "other similar products of distillation" subject to excise tax?
3. Is the Court bound by the Commissioner of Internal Revenue's (CIR's) interpretation and position regarding Sec. 148 (e) of the Tax Code?

Ruling:

1. No, the strict interpretation granting tax exemptions does not apply to this refund case. Not all claims for tax refund partake the nature of a tax exemption such that the rule of strict interpretation against the taxpayer is always applicable. Instead, the rule applicable in this case is the doctrine of strict construction of tax laws in favor of the taxpayer.

When the claim for tax refund is premised on the taxpayer's erroneous payment of the tax or the government's exaction in the absence of a law, the rule to be applied must be the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions.

In the case at bar, Petron's claim for tax refund is not founded on any tax exemption law but on the government's erroneous assessment and collection of excise taxes on its alkylate importations, without clear legal basis. Petron's entitlement to a tax refund is not based on the existence of a tax exemption clause in its favor but premised on its claim that alkylate is not subject to excise tax under Sec. 148 (e) of the Tax Code.

Petron does not seek to be exempt from excise taxes on its alkylate importations. Instead, Petron anchors its claim for tax refund on the absence of a law that imposes excise tax on alkylate. Thus, in the absence of a law expressly and unambiguously imposing excise tax on alkylate, the appropriate rule to be applied is the strict interpretation in the imposition of taxes such that the statute must be construed most strongly against the government and in favor of the taxpayer.

2. No, alkylate does not fall under the category of "other similar products of distillation" subject to excise tax.

Alkylate is not expressly mentioned in Sec. 148 (e) of the Tax Code as one of the goods subject to excise tax. Neither does it tax "products whose raw materials are products of distillation." Rather, the provision plainly taxes only "[n]aphtha, regular gasoline and other similar products of distillation." Hence, to be covered by the said provision, alkylate itself, rather than its "raw materials," must be the "product of distillation." Notably, it is undisputed that alkylate is not produced by the process of distillation, but by alkylation.

Sec. 148 (e) of the Tax Code imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production.

Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."

Therefore, in construing the phrase "other similar products of distillation" as stated in Sec. 148 (e) of the Tax Code, the same must only include or be restricted to things or cases akin to, resembling, or of the same kind or class as those specifically mentioned, (i.e., naphtha and regular gasoline). Since alkylate does not belong to the same category as naphtha and regular gasoline, the same should not be subjected to excise tax.

3. No, the CIR's interpretation should not override, supplant, or modify the law.

Interpretations placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.

For the courts to subject alkylate to excise tax, the authority should be reasonably founded on the language of the statute. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.

SGV is the largest professional services firm in the Philippines. In everything we do, we nurture leaders and enable businesses for a better Philippines. This Purpose is our aspirational reason for being that ignites positive change and inclusive growth.

Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. Working across assurance, tax, strategy and transactions, and consulting services, SGV teams ask better questions to find new answers for the complex issues facing our world today.

SGV & Co. is a member firm of Ernst & Young Global Limited. EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets. Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com/ph.

© 2023 SyCip Gorres Velayo & Co.
All Rights Reserved.
APAC No. 10001110
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Clark, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Allenierey Allan V. Exclamador via e-mail at allenierey.v.exclamador@ph.ey.com or at telephone number (632) 8894-8398.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor. While these information have been carefully prepared for reference, they are of a general nature and should not be applied without the guidance/advice of experts trained specifically to interpret and apply them.

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.