



BUREAU OF CUSTOMS

MAKABAGONG ADUANA, MATATAG NA EKONOMIYA



PROFESSIONALISM

INTEGRITY

ACCOUNTABILITY

08 June 2023

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CUSTOMS MEMORANDUM CIRCULAR
NO. 94-2023

TO : ASSISTANT COMMISSIONER
DEPUTY COMMISSIONERS
SERVICE DIRECTORS AND DIVISION CHIEFS
DISTRICT AND SUB-PORT COLLECTORS
ALL OTHERS CONCERNED

Attached herewith is the Department Order No. 033-2023 dated 19 May 2023 from the Department of Finance with subject:

"GUIDELINES ON THE IMPOSITION OF LOCAL TAXES, FEES, AND CHARGES ON REGISTERED BUSINESS ENTERPRISES (RBES) AVAILING OF TAX INCENTIVES PRIOR TO EFFECTIVITY OF THE CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT."

For records purposes, please confirm the dissemination of this circular throughout your offices within fifteen (15) days from receipt hereof.

For your information and guidance.

[Signature]
BIENVENIDO Y. RUBIO
Commissioner



JUN 16 2023

CMC No. 94-2023



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

Internal Admin. Group
Received by: VICKY REYES
Date: 05/22/2023
Time: 3:00

EMAIL



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BUREAU OF CUSTOMS MESSAGE CENTER	
RECEIVED	
MAY 22 2023	
BY: A. LIBRARIOS	TIME: 10:54

DEPARTMENT ORDER NO. 033.2023

TO : All Local Treasurers and Assistant Local Treasurers; and Others
Concerned

3:39

SUBJECT : GUIDELINES ON THE IMPOSITION OF LOCAL TAXES, FEES, AND CHARGES ON REGISTERED BUSINESS ENTERPRISES (RBES) AVAILING OF TAX INCENTIVES PRIOR TO THE EFFECTIVITY OF THE CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT

Section 1. Rationale and Objective. This Department Order is issued to address the concerns of RBEs granted incentives before the effectivity of Republic Act (RA) No. 11534 or the CREATE Act (hereinafter referred to as "transitioning RBEs"), with respect to the imposition of local taxes, fees, and charges by local government units (LGUs) notwithstanding their exemption therefrom pursuant to their registration agreements.

The Department Order aims to clarify the rules for transitioning RBEs insofar as local taxes, fees, and charges are concerned, consistent with Section 311 of the Tax Code, as amended by the CREATE Act.

Section 2. Legal Bases. This Department Order is issued based on the following legal bases:

- 2.1 Section 311 of the Tax Code, as amended by the CREATE Act, as implemented by Rule 18 of the implementing rules and regulations (IRR) of the CREATE Act, as amended, provides for the transitory provisions applicable to enterprises that were granted incentives prior to the effectivity of the CREATE Act;
- 2.2 Section 3(A)(2), Chapter 1, Title II, Book IV of the Administrative Code of 1987 provides for the mandate of the Department of Finance to formulate, institutionalize and administer fiscal and tax policies; and
- 2.3 Article 287 of the IRR of the Local Government Code (LGC) of 1991 authorizes the Secretary of Finance to formulate and prescribe

procedures and guidelines under Rule XXX (Local Government Taxation).

Section 3. Coverage. This Department Order prescribes the rules for transitioning RBEs vis-a-vis the imposition of local taxes, fees and charges by LGUs.

Section 4. Definition of Terms. For purposes of this Department Order, the following terms shall mean as follows:

- 4.1 **Charges** refer to pecuniary liability, as rents or fees against persons or property;¹
- 4.2 **Fee** means a charge fixed by law or ordinance for the regulation or inspection of a business or activity;²
- 4.3 **Investment Promotion Agencies** refer to government entities created by law, executive order, decree or other issuance, in charge of promoting investments, granting and administering tax and non-tax incentives, and overseeing the operations of the different economic zones and freeports in accordance with their respective special laws. These include the Board of Investments (BOI), Regional Board of Investments-Autonomous Region in Muslim Mindanao (RBOI-ARMM), Philippine Economic Zone Authority (PEZA), Bases Conversion and Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Cagayan Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone Authority (ZCSEZA), PHIVIDEC Industrial Authority (PIA), Aurora Pacific Economic Zone and Freeport Authority (APECO), Authority of the Freeport Area of Bataan (AFAB), Tourism Infrastructure and Enterprise Zone Authority (TIEZA), and all other similar existing authorities or that may be created by law unless otherwise specifically exempted from the coverage of this Code;³
- 4.4 **Local taxes** are taxes that may be imposed by LGUs in line with their power to create revenue sources within the limitations set forth by existing laws; and



¹ Section 133 (g) of the LGC of 1991

² Section 133 (l) of the LGC of 1991

³ Section 293 (h) of the NIRC of 1997, as amended by CREATE Act

4.5 **Transitioning RBEs** refer to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an IPA, and whose projects or activities are granted incentives prior to the effectivity of the CREATE Act on April 11, 2021 and subject to the Rules provided under Section 311 of the Tax Code, as amended.

Section 5. Imposition of Local Taxes, Fees, and Charges on Transitioning RBEs. Consistent with Section 311 of the Tax Code, as amended by the CREATE Act, all LGUs shall be guided by the following rules with respect to the imposition of local taxes, fees and charges to transitioning RBEs:

5.1 On local taxes

a. **Transitioning RBEs availing of ITH only.** All transitioning RBEs which were granted an ITH and classified either as pioneer or non-pioneer under Executive Order No. 226 and/or specified in the registration agreement shall be exempt from local business taxes for the remaining period of the ITH.

All other transitioning RBEs not falling within the immediately preceding paragraph shall be liable for the payment of local business tax in accordance with the provisions of the LGC.

b. **Transitioning RBEs currently availing of ITH that are also entitled to the 5% tax on GIE after the ITH.** All transitioning RBEs that were granted with ITH shall be guided by Section 5.1.a herein. Thereafter, such RBE shall be exempt from all local taxes⁴ while availing the 5% tax on GIE, subject to the 10-year limitation for both incentives.

c. **Transitioning RBEs availing of 5% tax on GIE only.** All transitioning RBEs availing the 5% tax on GIE only shall be exempt from all local taxes⁵ for a period of 10 years from the effectivity of the CREATE Act.

5.2 On fees and charges. Transitioning RBEs that were granted exemption from local fees and charges under their registration agreements with the concerned IPA, or by their respective LGUs, shall continuously be

⁴ Except real property taxes imposed on land owned by developers.

⁵ Except real property taxes imposed on land owned by developers.

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exempt from fees and charges for a period of 10 years. Otherwise, LGUs may continue collecting such fees and charges if RBEs are liable thereto prior to the effectivity of CREATE.

Section 6. Allocation of the 5% tax on GIE. Existing rules on the allocation of the 5% GIE among the National Government, LGUs, and the IPAs under special laws governing the latter shall be observed. However, for RBEs governed by special laws which do not provide for allocation, the 5% tax on GIE shall be paid and remitted as follows:

1. Three percent (3%) to the national government; and
2. Two percent (2%) shall be directly remitted to the treasurer's office of the municipality or city where the enterprise is located.

Section 7. Other Local Fiscal Incentives. LGUs are not precluded from granting fiscal incentives pursuant to Section 192 of the LGC of 1991, subject to the conditions imposed under Article 282 of the IRR of the LGC, and other existing laws, rules and regulations.

Section 8. Monitoring. The Bureau of Local Government Finance (BLGF), in coordination with the Fiscal Incentives and Review Board (FIRB) Secretariat, shall monitor the implementation of this Department Order, provide the necessary technical assistance to local governments, and issue clarificatory guidelines for the purpose.

Section 9. Repealing Clause. All Department Orders, circulars, memoranda or issuances contrary or inconsistent herewith are hereby revoked and/or modified accordingly.

Section 10. Effectivity. This Department Order shall take effect immediately.



BENJAMIN E. DIOKNO

Secretary
MAY 19 2023

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Annex A
Sample Illustrations

Illustration No. 1

Background: Company A is a new developer of economic and low-cost housing and is registered with the Board of Investments (BOI) with a Non-Pioneer status under Certificate of Registration No. 2018-01 dated 15 March 2018. It is entitled with Income Tax Holiday (ITH) for four (4) years from the date of its registration.

Local taxability after the effectivity of CREATE Act: Company A shall continue to be exempt from local business tax until 15 March 2022 only. After which, starting 16 March 2022, it shall be liable to pay local business tax. Company A shall cease to enjoy ITH after 15 March 2022, and commence to be liable to pay local business tax in January 2023, based on the gross sales or receipts from 16 March 2022 to 31 December 2022.

Company A shall also still be liable to pay regulatory fees and user charges for any services that the LGU may render in relation to the issuance of its Mayor's.

Illustration No. 2:

Background: Company B is a developer registered with PEZA and granted a five percent (5%) tax on gross income earned (GIE), in lieu of all national and local taxes, except real property taxes imposed on land owned by the developer, effective 12 February 2021.

Local taxability after the effectivity of CREATE Act: Company B shall be exempt from the payment of all local taxes, from 12 February 2021 to 12 February 2031. In January 2032, it will be liable to pay local business tax for its sales, receipts and revenues from its operations from 13 February 2031 to 31 December 2031.

Company A shall also still be liable to pay regulatory fees and user charges for any services that the LGU may render in relation to the issuance of its Mayor's.

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Illustration No. 3:

Background: Company C is a PEZA-registered enterprise subject to 5% tax on GIE from 23 November 2017. On the same date, it forged a Memorandum of Agreement with LGU Abc that Company C shall be exempt from the payment of all fees and charges, except for garbage fee.

Local taxability after the effectivity of CREATE Act: Company C shall start paying applicable local taxes starting from 24 November 2027. In January 2028, it will be liable to pay local business tax for its sales, receipts and revenues from its operations from 24 November 2023 to 31 December 2027. However, Company C shall continue to be exempt from regulatory fees and charges, except garbage fee, as provided in its Memorandum of Agreement with LGU Abc.

Illustration No. 4:

Background: Company D is an enterprise registered with the Authority of the Freeport Area of Abc, is granted an ITH with exemption from local business tax for six (6) years starting 20 June 2012, and is likewise entitled to 5% tax on GIE, which shall be availed after its ITH incentive.

Local taxability after the effectivity of CREATE Act: Company D shall be exempt from the payment of local business tax from 20 June 2012 to 20 June 2018 but shall be liable to pay regulatory fees and charges for the services rendered by the LGU concerned.

Starting on 21 June 2018 to 21 June 2028, it shall be exempt from the payment of all local taxes in view of its availment of the 5% tax on GIE. Moreover, from 21 June 2018 to 10 April 2021, it shall be exempt from the payment of fees and charges, while starting 11 April 2021, the LGU may impose regulatory fees and charges for the services it may rendered to Company D. Further, starting 22 June 2028, it will be liable to pay all applicable local taxes that may be imposed by the LGU concerned. For local business tax, it shall start paying in January 2029, based on the gross sales or receipt from 22 June 2028 to 31 June 2028.



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Illustration No. 5

Background: Company E is a registered business enterprise situated in the 123 Freeport Zone and granted an ITH on 15 May 2015.

Local taxability after the effectivity of CREATE Act: Company E is liable to pay the applicable local taxes, fees and charges beginning the start of its operations as its ITH incentive does not include its exemption from local taxes, fees and charges.

