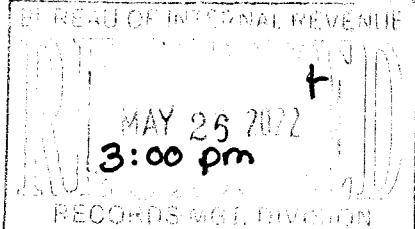




REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE



May 26, 2022

REVENUE REGULATIONS NO. 4-2022

SUBJECT: Implementing Section 295(F), in relation to Section 294, both of the National Internal Revenue Code of 1997, as Amended by Republic Act (RA) No. 11534, Otherwise Known as the "Corporate Recovery and Tax Incentives for Enterprises Act" (CREATE Act), on the Tax Treatment of the Importation of Petroleum and Petroleum Products into, and Subsequent Transfer, Transport and/or Withdrawal through and from Freeport Zones and Economic Zones.

TO : All Internal Revenue Officers and Others Concerned

BACKGROUND

Section 295(F) of the National Internal Revenue Code of 1997 (Tax Code), as amended by RA No. 11534 or the CREATE Act, provides, to wit:

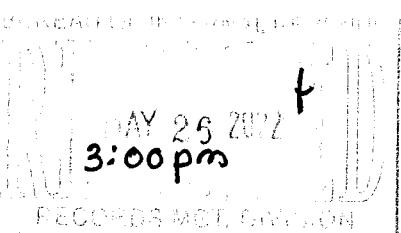
"(F) Persons who directly import petroleum products defined under Republic Act No. 8479, otherwise known as the 'Downstream Oil Industry Deregulation Act of 1998', for resale in the Philippine customs territory and/or in free zones as defined under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, shall not be entitled to the foregoing tax and duty incentives, and shall be subject to appropriate taxes imposed under this Code.

Any law to the contrary notwithstanding, the importation of petroleum products by any person, including registered business enterprises, shall be subject to the payment of applicable duties and taxes as provided under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, and this Code, respectively, upon importation into the Philippine customs territory and/or into free zones as defined under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act.:

Provided, That the importer can file for claims for the refund of duties and taxes applicable under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, and this Code, respectively, for direct or indirect export of petroleum products, and/or other tax-exempt sales under the Customs Modernization and Tariff Act and other special laws within the period provided therein:

Provided, further, That the importers who subsequently export fuel, subject to the appropriate rules of the fuel marking program, may apply for a refund of duties and taxes, as applicable under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, and this Code."

Thus, upon the effectivity of the CREATE Act, the importation of petroleum and petroleum products into the Freeport Zones and Economic Zones is already subject to applicable taxes. These Regulations are hereby issued in order to ensure the collection of the proper duties and taxes on petroleum products and to institute strict measures to control and monitor the movement and storage thereof which are entered and imported into Freeport Zones and Economic Zones and its subsequent transfer, transport, and/or withdrawal therefrom.



SECTION 1. SCOPE – Pursuant to Section 244, in relation to Section 245, of the Tax Code, these Regulations are hereby promulgated in order to prescribe the following:

- (i) the tax administration treatment of all petroleum and petroleum products entered and/or imported into Philippine Freeport Zones or Economic Zones;
- (ii) the strict monitoring of the movement of all petroleum and petroleum products within the aforementioned Zones and the subsequent transfer, transport and/or withdrawal of the same therefrom; and
- (iii) the refund of Value- Added Tax (VAT) and Excise taxes paid for transactions statutorily zero-rated or exempt therefrom.

Moreover, these Regulations will provide administrative guidelines on the operation and maintenance of storage tanks, facilities, depots or terminals where commodities for commercial use can be stored.

SECTION 2. DEFINITION OF TERMS –

Freeport Zones and Economic Zones (Zones), as defined in Section 4 (N) and (CC), respectively, of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 11524, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, are considered as separate customs territories.

Entry into Freeport Zones and Economic Zones is the act of bringing goods into the Zones coming from a place within the territory of the Philippines.

Importation into Freeport Zones and Economic Zones is the act of bringing in goods from a foreign territory into Philippine Zones, whether for consumption, warehousing, or admission.

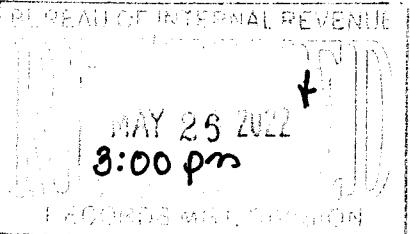
Petroleum shall refer to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances, with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits.

Petroleum Products shall refer to products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvents, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or other such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: *Provided*, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products.

Terminal and Depot shall be used synonymously and, for purposes of these Regulations, shall refer to a facility with at least one (1) structure, such as a silo, tank, yard or warehouse, intended for storage of commodities, whether in bulk or in packages, which may or may not have handling equipment, such as pipelines or conveyors, as well as berth for mooring cargo carriers.

Transfer of Petroleum and Petroleum Products to Other Zones and Tax Free Entities is the act of moving the petroleum products from its original carrying vessel/lorry or initial storage facility used to receive the same upon entry and/or importation and brought to other Philippine Freeport Zones, Economic Zones, or other duly registered entities possessing tax-free privileges as provided by law.

Transport of Petroleum and Petroleum Products from Freeport Zones and Economic Zones is the act of bringing out and removal of all petroleum and petroleum products from the Freeport Zones or Economic Zones and moved through Philippine Territory.



Withdrawal of Petroleum and Petroleum Products from Freeport Zones and Economic Zones is the act of bringing out and removal of all petroleum and petroleum products from the Freeport Zones or Economic Zones.

Withdrawal Certificate pertains to an accountable BIR Form No. 2231 required to be accomplished by manufacturers and importers of petroleum products for every removal of products from the refinery or Customs custody, irrespective of destination, indicating therein the name and address of the consignee, date of removal, quantity and description of every product removed, and such document covers importers of finished petroleum product.

Permit to Operate is the document issued by the Bureau of Internal Revenue (BIR) to excise taxpayers or operators, lessors/lessees of storage facilities of articles subject to excise taxes which shall include the appropriate terms and conditions for the strict observance of the permittee, including the exact description of the commodity to be contained therein. Should the permittee wish to change the contents of said storage facility, it should secure another permit to operate or permit to operate exempt facility, as the case may be.

Permit to Operate Exempt Facility is the document to be issued by the BIR to operators, lessors/lessees of storage facilities of articles which are not subject to excise tax. Said permit should contain the appropriate terms and conditions for the strict observance of the permittee, including the exact description of the commodity to be contained therein. Should the permittee wish to change the contents of said storage facility, it should secure another permit to operate or permit to operate exempt facility, as the case may be.

Permittee is the taxpayer granted by the BIR a permit to operate. The permittee is one who either owns, operates and/or leases to others the storage facilities as covered by a lease or operating agreement.

Lease or Operating Agreement is the document that stipulates the agreement between the lessee and lessor with regard to the use and/or operation of the former of the storage facilities owned by the lessor.

Lessor or Operator shall be used synonymously with an owner or the one that grants the use of a storage facility with whom a lease agreement was executed.

Lessee shall refer to the one who is granted the use of a storage facility by virtue of a lease agreement with its owner or operator.

SECTION 3. TAX TREATMENT OF ALL PETROLEUM AND PETROLEUM PRODUCTS ENTERED AND IMPORTED INTO FREEPORT ZONES AND ECONOMIC ZONES, OR LOCATORS OR OTHER PERSONS/ENTITIES; REFUND OF TAXES PAID; AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) AND OTHER ADMINISTRATIVE REQUIREMENTS.-

The VAT and Excise tax which are due on all petroleum and petroleum products that are entered and/or imported into the Zones shall be paid by the party which entered the same or the importer thereof, as the case may be, to the Bureau of Customs (BOC) prior to any and all subsequent Transfer, Transport and/or Withdrawal of the same after its entry or importation.

The excise tax or VAT paid, as the case maybe, for petroleum and petroleum products that are exported outside the Philippines or transferred, delivered and sold to the following:

For VAT: (1) to a registered export enterprise and have been directly and exclusively used in its registered export project/activity; or (2) to entities engaged in international shipping or air transport operations and have been actually used therefor; or (3) to entities that are statutorily zero-rated for VAT under special laws or international agreements to which the Philippines is a signatory;

For Excise Tax: (1) international carriers of Philippine or foreign registry on their use or consumption outside the Philippines; or (2) exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption; or (3) entities which are by law exempt from direct and indirect taxes.

may be refunded by filing a claim for credit or refund with the BIR for verification and evaluation. Once approved, the claim shall be forwarded to the BOC for cash payment or issuance of a tax credit certificate, as applicable. No claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that said petroleum or petroleum products have actually been transferred, delivered, sold, and used by, the foregoing entities for the above-stated purposes.

In case the Zone registered enterprise shall subsequently (1) sell/introduce the petroleum or petroleum products, or part of the volume thereof, into the customs territory (except sales of fuel for use in international operations), or (2) sell to another Zone registered business enterprise and/or party not enjoying tax privileges, no refund for taxes shall be granted for the product sold. In any event, the possessor of petroleum or petroleum products must be able to present sufficient evidence that the proper taxes due thereon have been paid, otherwise all the taxes due on said goods shall be collected from said possessor/user.

The importation, however, of petroleum products by a registered export enterprise to be used directly and exclusively for its project or activity shall be VAT exempt but subject to excise tax.

Moreover, the importation by a Philippine refinery enjoying fiscal incentives with an Investment Promotion Agency (IPA) of crude petroleum to be refined at its refinery inside the Zone, shall be exempt from payment of applicable duties and taxes under Section 295(G) of the Tax Code.

Upon lifting of the petroleum products produced from the imported crude oil, the applicable duties and taxes shall be paid thereon, thus:

- (a) during Income Tax Holiday (ITH), the excise tax or VAT paid, as the case may be, on petroleum products sold to entities entitled to 0% VAT or excise tax exemption may be claimed for refund under this rules; and
- (b) during 5% SCIT/GIE, the export sales and sales inside the Zones shall be exempt from VAT and excise taxes.

The introduction into the customs territory of petroleum products produced from the imported crude oil by the said refinery to the extent of its local sales allowance, shall be subject to applicable duties and taxes payable by the importer thereof. Provided that the excise tax or VAT paid, as the case may be, paid on sale to entities entitled to 0% VAT or excise tax exemption may be claimed for refund under this rules. Provided finally, that importations of petroleum products produced from imported crude oil by registered export enterprises located outside the Zones and used directly and exclusively in their registered project or activity shall be exempt from VAT but subject to excise taxes.



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For each and every Transfer, Transport and/or Withdrawal of petroleum and petroleum products, the party which entered the same or the importer thereof, as the case may be, shall before the release thereof from Customs custody and the respective Zone Authority:

1. secure the prescribed ATRIG from the BIR's Excise Tax Regulatory Division (ETRD) for petroleum and petroleum products imported into the Zones;
2. pay the Value-Added and Excise Taxes, as the case may be and computed at the time of Transfer, Transport and Withdrawal;
3. obtain a Withdrawal Certificate from the BIR ELTFOD for petroleum and petroleum products entered into the Zones. The Withdrawal Certificate shall, at all times, accompany each and every Transfer, Transport and/ or Withdrawal of petroleum products regardless of the mode of conveyance.

For excise tax purposes, all importers of petroleum and petroleum products shall secure a Permit to Operate with the BIR's ETRD. Such permit shall prescribe the appropriate terms and conditions which shall include, among others, the issuance of a Withdrawal Certificate and the submission of liquidation reports, for the Permittee's strict compliance.

SEC. 4. REGISTRATION OF ALL STORAGE FACILITIES. – All tank facilities, depots or terminals throughout the Philippines, including those located within the Freeport Zones as well as within the Economic Zones shall be registered by the owners, lessors or operators thereof with the appropriate BIR Office having jurisdiction over the said facilities as follows:

Revenue Regions Where the Storage Facilities are Located	Appropriate BIR Office Where to Register
Revenue Region Nos. 4, 5, 6, 7, 8, 9 and 10	Excise Tax Regulatory Division, National Office
Revenue Region Nos. 1, 2 and 3	Excise Tax Area I-Baguio City
Revenue Region Nos. 11 and 12	Excise Tax Area III-Bacolod
Revenue Region Nos. 13, 14	Excise Tax Area IV-Cebu
Revenue Region Nos. 15 and 19	Excise Tax Area V-Davao
Revenue Region Nos. 16, 17 and 18	Excise Tax Area VI-Cagayan de Oro

In cases where said facilities will be used for the storage of petroleum or petroleum products or other goods subject to excise taxes, a Permit to Operate from the BIR shall be issued. Said permit shall prescribe the appropriate terms and conditions which shall include, among others, the maintenance of Official Register Books or their equivalent, issuance of Withdrawal Certificate for every removal from the refinery or customs custody to the point of destination and succeeding transfer of petroleum products, joint supervision over the facilities with the BIR, through the assignment of revenue officers, and stocktaking/physical inventory taking of petroleum and petroleum products stored therein. The monitoring requirements prescribed in this Section and in the permit granted shall likewise be strictly observed.

A facility which will not be used for storage of petroleum or petroleum products or other articles subject to excise taxes, if satisfactorily established to the BIR, will be issued a Permit to Operate Exempt Facility. This notwithstanding, both Permit to Operate and Permit to Operate Exempt Facility should categorically state the goods stored therein, and should any changes be planned, an application for new permit should be made.

SEC. 5. TRANSITORY PROVISIONS. – All owners, lessors or operators of tank facilities, depots or terminals shall submit the following copies of documents to the appropriate BIR Offices according to the preceding Section within fifteen (15) days from the date of effectivity of these Regulations:

- (a) BIR Certificate of Registration;
- (b) Latest Blueprint of the Perspective Design of the whole storage facility, depot or terminal specifically containing, among others, the tanks located therein, duly approved by a licensed professional authorized by law to issue such document;
- (c) Lease or Operating Agreement, in case the whole facility, depot or terminal is actually being leased or operated by another person or entity other than the owner thereof;
- (d) Terminalling, Lease, or Storage Agreement(s) with the lessee-owner(s) of the contents of the respective tanks; and
- (e) Notarized undertaking(s) executed jointly with the respective lessee-owner(s) of the content(s) of the storage tank(s) within the facility, depot or terminal containing the tank number, description of the product and the volume of inventory thereof as of the date of effectivity of these Regulations.

The concerned BIR Offices shall issue the duly approved Permits to Operate, after evaluation/validation of the foregoing documents and the conduct of verification and ocular inspection of the facilities, depots and terminals, within thirty (30) days from receipt of such documents.

SEC. 6. PENALTIES. – Any violation of these Regulations shall be subject to the corresponding penalties under the pertinent provisions of the NIRC of 1997, as amended, and applicable regulations.

SEC. 7. SEPARABILITY CLAUSE. - If any provision of these Regulations is declared invalid by a competent court, the remainder of these Regulations or any provision not affected by such declaration of invalidity shall remain in force and effect.

SEC. 8. REPEALING CLAUSE. – All regulations, rulings or orders, or portions thereof which are inconsistent with the provisions of these Regulations are hereby revoked, repealed or amended accordingly.

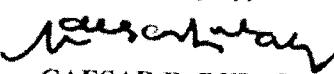
SEC. 9. EFFECTIVITY. – These Regulations shall take effect after fifteen (15) days following publication in the Official Gazette or in a newspaper of general circulation, whichever comes first.




CARLOS G. DOMINGUEZ
Secretary of Finance

MAY 24 2022

Recommending Approval:


CAESAR R. DULAY
Commissioner of Internal Revenue
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