

MEMORANDUM CIRCULAR No. 2023-004
Series of 2023

TO : ALL BOARD OF INVESTMENTS (BOI) REGISTERED BUSINESS ENTERPRISES (RBE's) AND OTHERS CONCERNED

SUBJECT : GUIDELINES ON THE AVAILMENT OF DUTY EXEMPTION/ VAT AND CUSTOMS DUTY EXEMPTION ON IMPORTATION OF CAPITAL EQUIPMENT, RAW MATERIALS, SPARE PARTS OR ACCESSORIES UNDER REPUBLIC ACT NO. 11534 OR THE CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT

These Guidelines are issued pursuant to Part II, Rule 2, Section 4 of the Implementing Rules and Regulations (IRR) of the CREATE Act.

SECTION 1. *Scope and Coverage.* These Guidelines cover the availment of VAT and customs duty exemption on importation of capital equipment, raw materials, spare parts, or accessories by all Board of Investments (BOI) Registered Business Enterprises (RBEs), as follows:

Export Enterprise	VAT and customs duty exemption	Seventeen (17) years from date of registration
Domestic Market Enterprise	Customs duty exemption	Twelve (12) years from date of registration

SECTION 2. *Definition of Terms.* For purposes of these Guidelines, the following definitions shall apply:

- a. "*Accessories*" refer to any article, other than capital equipment and spare parts, designed to be used in connection with the capital equipment.
- b. "*ASEAN Harmonized Tariff Nomenclature (AHTN)*" refers to an 8-digit commodity nomenclature and coding system agreed to be adopted by the ASEAN member countries. It shall be used as the basis for determining the specific tariff lines for the capital equipment, spare parts, raw materials and accessories imported under the CREATE Act.
- c. "*Board*" or "*BOI*" refers to the Board of Investments.
- d. "*Capital Equipment*" refers to machinery, equipment, major components thereof, tools, devices, applications or apparatus, which are directly or reasonably needed in the registered project or activity of the RBE.¹
- e. "*Certificate of Authority to Import (CAI)*" refers to the document issued by the BOI as proof of entitlement to duty exemption on importation, which shall contain the list of capital equipment, raw materials, spare parts or accessories to be imported.²

¹ CREATE Act IRR, Rule 1, Section 4(E)

² CREATE Act IRR, Rule 1, Section 4(F)

- f. “*Certificate of Non-Local Availability (CNLA)*” refers to the document issued by the BOI to certify that the capital equipment, raw material, spare parts, or accessories are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices.³
- g. “*Imported items*” refer to imported capital equipment, raw materials, spare parts or accessories.
- h. “*Raw Materials*” refer to the direct materials or component parts that go directly into a product manufactured or produced by the RBE for its registered project.⁴
- i. “*Spare Parts*” refer to the usual components of the capital equipment, which are subject to normal wear and tear arising from use, utilization and operation.

SECTION 3. Conditions for Exemption from Customs Duty. The importation by RBEs, in good standing, of capital equipment, raw materials, spare parts, or accessories shall be exempt from customs duty provided that the following conditions are complied with:

- a. **Direct and Exclusive Use.** The customs duty exemption shall only apply to the importation of capital equipment, raw materials, spare parts, or accessories directly and exclusively used in the registered project or activity by RBEs.⁵
- b. The capital equipment, raw materials, spare parts, or accessories:
 - i. are directly and reasonably needed by the RBE;
 - ii. will be used exclusively in and as part of the direct cost of the registered project or activity of the RBE; and
 - iii. are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices.⁶ In compliance with this condition, the RBE shall secure the CNLA from the BOI-Legal and Compliance Service prior to importation;
- c. **Prior approval.** The approval of the BOI, through the CAI, must be obtained by the RBE prior to the importation of the goods.⁷ Provided, that the application for importation shall be accompanied by a quotation/pro forma invoice in the name of the applicant RBE as consignee to whom the shipment will be released.

SECTION 4. Conditions for VAT Exemption. The VAT exemption on importation shall only apply to goods directly and exclusively used in the registered project or activity of a registered export enterprise during the period of registration of the registered project or activity.⁸

SECTION 5. Sale, Transfer, or Disposition. Within the first five (5) years from the date of importation, the RBE shall secure the BOI approval before the sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories which were granted customs duty exemption; *Provided*, that the sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories within five (5) years from the date of importation shall require the payment of duties based on the net book value of the capital equipment, raw materials, spare parts, or accessories. The sale, transfer, or disposition thereof shall be allowed only under the following circumstances:

³ CREATE Act, Section 294(D) in relation to Section 295(C) and CREATE IRR, Rule 2, Section 4(B)(3)

⁴ CREATE Act IRR, Rule 1, Section 4(V)

⁵ CREATE Act IRR, Rule 2, Section 4(A)

⁶ CREATE Act IRR, Rule 2, Section 4(B)

⁷ CREATE Act IRR, Rule 2, Section 4(C)

⁸ CREATE Act IRR, Rule 2, Section 5

- a. If made to another RBE availing customs duty exemption on imported capital equipment, raw materials, spare parts, or accessories for its direct and exclusive use;⁹
- b. If made to another enterprise not availing of duty exemption on imported capital equipment, raw materials, spare parts, or accessories, upon payment of any taxes and duties on the net book value of the capital equipment, raw materials, spare parts, or accessories to be sold;¹⁰
- c. Exportation of capital equipment, raw materials, spare parts, or accessories, source documents, or those required for pollution abatement and control;¹¹
- d. Proven technical obsolescence of the capital equipment, raw materials, spare parts, or accessories;¹² or
- e. If donated to Technical Education and Skills Development Authority, State University and Colleges (SUCs), or the Department of Education (DepEd) and Commission on Higher Education (CHED)-accredited schools; provided, that the donation shall be exempt from import duties and taxes, including donor's tax.

After 5 years from the date of importation, the RBE shall notify BOI prior to the sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories.¹³

SECTION 6. *Solidary Liability.* If the RBE sells, transfers, or disposes the imported items without prior BOI approval, the RBE and the vendee, transferee, or assignee shall be solidary liable to pay twice the amount of the duty exemption that should have been paid during its importation, without prejudice to any penalties or sanctions that the BOI may impose.¹⁴

SECTION 7. *Utilization in Non-registered Project or Activity.* In the event that the imported items will be used for a non-registered project or activity by the RBE at any time within the first five (5) years from date of importation, the RBE shall secure prior approval from the BOI and pay the amount corresponding to the exempt customs duty on importation thereof.

For part-time utilization in a non-registered project or activity, the amount corresponding to the customs duty exempt on a specific capital equipment, raw materials, spare parts, or accessories shall be paid in proportion to its utilization for the non-registered project or activity.¹⁵

SECTION 8. *Documentary Requirements.* The following are the documentary requirements on the application for VAT and customs duty exemption on importation of capital equipment, raw materials, spare parts or accessories:

- a. Notarized BOI CAI application form¹⁶ and Annexes "A" and "B";
- b. Pro forma Invoice or Quotation from the supplier;

⁹ CREATE Act IRR, Rule 2, Section 4(D)(a)

¹⁰ CREATE Act IRR, Rule 2, Section 4(D)(b)

¹¹ CREATE Act IRR, Rule 2, Section 4(D)(c)

¹² CREATE Act IRR, Rule 2, Section 4(D)(d)

¹³ CREATE Act IRR, Rule 2, Section 4(D)(e)

¹⁴ CREATE Act IRR, Rule 2, Section 4(E)

¹⁵ CREATE Act IRR, Rule 2, Section 4(F)

¹⁶ To be provided by BOI

- c. In case of importation of raw materials, a "Formula of Manufacture" per registered product, as certified by Industrial Technology Development Institute of Department of Science and Technology (ITDI-DOST); and
- d. Other relevant documents, as may be required by BOI.

SECTION 9. *Application for CAI.* The RBE may file with the BOI-Incentives Administration Service, electronically or manually, the notarized BOI CAI application form accomplished in two (2) copies on a per shipment basis. The BOI shall act on the application within seven (7) working days from its official acceptance and payment of corresponding fee.

The CAI shall include the BOI registration number, date of registration, activity, date of application and issuance, validity period, quantity and description of the capital equipment, spare parts, raw materials and accessories to be imported and applicable AHTN tariff code, and other relevant information.

The action of the BOI, whether it be approval or disapproval, shall be communicated in writing to the applicant. If disapproved, the BOI shall state the reasons. If issued, a copy of the CAI shall be sent to the BOC.¹⁷

SECTION 10. *Validity of CAI.* The CAI is non-transferable and shall be valid for a period of one (1) year from the date of issuance, unless earlier invalidated or revoked. If the CAI remained unutilized during its validity period, the RBE shall surrender it to the BOI within fifteen (15) days from its expiration.¹⁸

SECTION 11. *Application for CNLA.* The RBE shall secure a CNLA from the BOI-Legal and Compliance Service. In its request for CNLA, the RBE shall provide a copy of pro-forma invoice or purchase order of items to be imported, copy of Packing List, fabrication drawing of the parts/components, if applicable, and pay the corresponding fee of Php 1,500.00.

SECTION 12. *Import Procedure with the Department of Finance (DOF) and Bureau of Customs (BOC).* For the issuance of Tax Exemption Indorsement (TEI), the RBE shall submit to the DOF the CAI and CNLA issued by the BOI, including official import documents, as may be required by DOF.

For the release of the shipment, the RBE shall, upon release of the DOF TEI, file a Single Administrative Document with the BOC, including supporting documents, as may be required by the BOC.

SECTION 13. *Performance Bond/Guarantee.* The posting of performance bond from the Government Service Insurance System (GSIS), equivalent to the VAT and/or duties waived on the imported capital equipment, raw materials, spare parts or accessories, shall be a pre-condition to the importation by RBEs. In lieu of the bond, the RBE may provide for guarantee from the principal stockholder/s or other form of guarantee to ensure performance.

The performance bond/guarantee shall be valid for one (1) year. The RBE shall renew or extend the validity of the performance bond/guarantee yearly, until compliance with the conditions that warrants its lifting; Otherwise, the same shall be forfeited.

¹⁷ CREATE Act IRR, Rule 9, Section 2(para. 2)

¹⁸ CREATE Act IRR, Rule 9, Section 3

The performance bond/guarantee will only be lifted in the following cases:

- a. for domestic enterprises, upon installation and utilization of the imported capital equipment for the registered activity; and
- b. for export enterprises, after a period of one (1) year from exportation. Provided, the BOI may waive the performance bond for RBEs with a good track record.¹⁹

For the purpose of lifting the performance bond/guarantee, the RBE shall file a letter request to BOI-Incentive Administration Service, including information on the installation date of the imported capital equipment.

SECTION 14. *Forfeiture of Performance Bond/Guarantee.* The performance bond/guarantee may be forfeited in favor of BOI in the following cases:

- a. violation of the terms and conditions for importation;
- b. expiration of the validity period of performance bond/guarantee without being renewed or extended; or
- c. failure to request for the lifting of the performance bond/guarantee after the compliance with the conditions under Section 13 of these Guidelines.

In the event of violation of the terms and conditions for importation, the principal stockholder/s shall be solidarily liable with the RBE.

SECTION 15. *Monitoring of Imported Items.* For monitoring purposes, the RBE shall submit to the BOI-Incentives Administration Service, within five (5) days from the release of the imported items by BOC, the following:

- a. list of imported items with VAT and customs duty exemption;
- b. copies of the goods declarations or Single Administrative Document; and
- c. other pertinent documents, as may be required by the BOI.

The imported items shall, at any reasonable time, be subject to inspection by the BOI to verify whether it has actually been installed and is being used by the RBE in its registered activity.²⁰

SECTION 16. *Penalty.* After due notice and hearing, the BOI may cancel the registration, suspend the enjoyment of incentives herein and/or require refund of incentives, including interests and monetary penalties, for any misrepresentation of information for the purposes of availing more incentives than what the RBE is entitled to.²¹

SECTION 17. *Modification.* BOI reserves the right to amend, revise and/or modify any provision in these Guidelines subject to publication IN NEWSPAPER OF GENERAL CIRCULATION and posting in BOI website.

¹⁹ CREATE Act IRR, Rule 9, Section 4

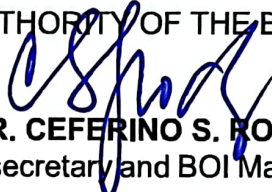
²⁰ CREATE Act IRR, Rule 9, Section 5

²¹ CREATE Act IRR, Rule 22, Section 1

SECTION 18. Effectivity. This Guideline shall take effect fifteen (15) days after its publication in a newspaper of general circulation and three (3) copies furnished the University of the Philippines (UP) Law Center.

30 June 2023 Makati City, Philippines.

BY AUTHORITY OF THE BOI BOARD


DR. CEFERINO S. RODOLFO
Undersecretary and BOI Managing Head

SECRETARY'S CERTIFICATE

This is to certify that Memorandum Circular No. 2023- 004 has been approved by the BOI through Board Resolution No. 03-05, Series of 2023 on 09 February 2023.


ATTY. ELYJEAN DC PORTOZA
Board Secretary