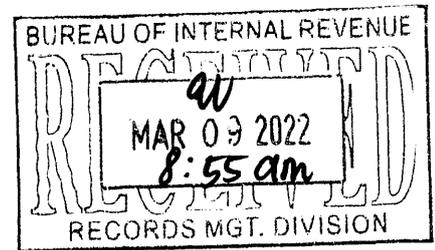




REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
BIR National Office Building
Diliman, Quezon City



February 18, 2022

REVENUE MEMORANDUM CIRCULAR NO. 23 - 2022

SUBJECT: Suspension of the Income Tax Incentives Granted to Registered Business Enterprises (RBEs) for Violating the Work-From-Home (WFH) Threshold as Prescribed by the Fiscal Incentives Review Board

TO: All Internal Revenue Officials, Employees and Other Concerned

I. BACKGROUND

The Fiscal Incentives Review Board (FIRB), a government agency that oversees the administration and grant of tax incentives by the Investment Promotion Agencies (IPAs) pursuant to Section 297 of the Republic Act (RA) No. 11534, otherwise known as the "Corporate Recovery and Tax Incentives for Enterprises Act" or "CREATE", has issued FIRB Resolution Nos. 19-21 and 23-21 which allows registered business enterprises (RBEs) of the Information Technology – Business Process Management (IT-BPM) sector to continue implementing work-from-home (WFH) arrangements without adversely affecting their fiscal incentives until March 31, 2022 subject to all of the following conditions:

- (1) The number of employees under a WFH arrangement shall not exceed ninety percent (90%) of the total workforce of the RBE; *Provided*, that beginning January 1, 2022, the ceiling shall be reduced to seventy-five percent (75%) for the remainder of the period; *Provided* further, that if the State of Calamity due to COVID-19 is extended to any date beyond January 1, 2022, the ceiling shall be maintained at ninety percent (90%) until March 31, 2022;
- (2) The number of computer laptops/other equipment of the RBE outside the ecozone should not exceed the number of its employees who are under WFH arrangement;
- (3) Bonds shall be posted for all equipment (e.g. computer desktops and laptops) deployed by the RBE to their employees' homes, to ensure payment of taxes and duties if any such equipment is not returned to the site of the RBE after the WFH arrangement;
- (4) Revenues from export as required shall be maintained regardless of the allowed ratio of employees who will work from home. *Provided*, that the current number of employees shall not be reduced regardless if the majority of their employees are working from home; and
- (5) The RBE shall comply with the reportorial requirements and site inspection, as may be required by the FIRB or IPA.

II. COVERAGE

This Circular shall cover all RBEs in the IT-BPM sector who opted to continue implementing work-from-home (WFH) arrangements amidst COVID-19 pandemic.

III. POLICY AND LIABILITY PROVISIONS

The non-compliance with all the conditions prescribed under FIRB Resolution Nos. 19-21 and 23-21 shall be meted with suspension of the income tax incentive on the revenue corresponding to the months of non-compliance. Hence, RBE shall pay the income tax using the regular rate of either twenty-five percent (25%) or twenty percent (20%) based on the taxable net income corresponding to the months the RBE has violation. For RBEs with no existing transactions subject to the regular income tax rate, BIR Form 1702-MX shall be used for the voluntary payment of the income tax due on the months with reported violation. However, for RBEs which have existing transactions subject to regular income tax rate, the voluntary payment shall be made through BIR Form 0605 and bank-validated copy of which shall be attached in AITR to be filed. In both cases, the computation of the income tax due shall be:

| | |
|---|-----------|
| Net taxable income* for the year /12 months | ₱ xxxx.xx |
| Multiply by the applicable rate of either 25% or 20%..... | X % |
| Income Tax Due | ₱ xxxx.xx |

*Computed based on existing policies which is net of allowable deduction

In the absence of voluntary payment by RBEs or the voluntary payments made is not sufficient, the RBE shall be subjected to an audit pursuant to a Letter of Authority (LOA).

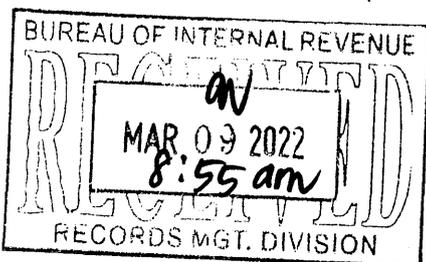
For uniform understanding of the term "total workforce", this Circular likewise clarifies that it shall refer to the total employees that are directly or indirectly engaged in the registered project or activity of the RBE, but excludes third-party contractors, if any, such as service contractors rendering janitorial or security services and other similar services.

For this purpose, the FIRB shall endorse the monthly reports (**Annex "A"**) submitted by IPAs regarding violations committed by concerned RBEs to the Bureau of Internal Revenue (BIR), addressed to the Assessment Service, Attention: Audit Information, Tax Exemption and Incentives Division or thru email: aiteid_ies@bir.gov.ph.

IV. PROCEDURES

A. Audit Information, Tax Exemption and Incentives Division (AITEID)

1. Verifies the corresponding Revenue District Office (RDO) code of the RBEs listed in the monthly report (Annex A) as endorsed by FIRB by matching the names with the BIR- Tax Registration System database;
2. Records the RBE's violations by accomplishing columns A to Q of Annex "B" per RDO jurisdiction;
3. Forwards the partially accomplished Annex "B" to the concerned RDO/LTS thru its dedicated office email address within ten (10) days from receipt of the last monthly report that completes the particular accounting period of the RBEs (i.e., Receipt of the



December, 2021 report of RBEs using calendar year as the accounting period; Receipt of the January, 2022 report of RBEs where taxable period is fiscal year ending January 31, 2022; etc.);

4. Maintains a database for the reports submitted by the RDO; and
5. Provides the FIRB of the action taken on the violations committed by the RBEs within sixty (60) days from the statutory filing of the Annual Income Tax Return for taxable years 2021 and 2022.

B. Revenue District Office (RDO) / Large Taxpayers Service (LTS)

1. Extracts the Annual Income Tax Return filed and other pertinent documents (i.e. Audited Financial Statements, etc.) from the Bureau's database upon receipt of the partially accomplished Annex "B" from AITEID;
2. Checks if the RBE voluntarily paid the regular income tax due on the months it has reported violation and evaluate if the payment is correct based on declared data in the AITR and AFS. If none was paid or the payment is not sufficient/correct, recommend the issuance of Letter of Authority for the conduct of audit covering all internal revenue taxes;
3. Completes the fields provided in Annex "B" by filling-out columns R to Z within forty-five (45) days from receipt thereon. The status could either be "RBE paid the income tax due based on the regular income tax rate for the particular month it violated", or "issued LOA for the conduct of audit", if there is no voluntary payment found in the filed AITR or if there is a discrepancy in the amount paid; and
4. Reverts the fully accomplished Annex "B" to AITEID.

V. EFFECTIVITY

This Circular shall take effect immediately until March 31, 2022 pursuant to FIRB Resolution No. 19-2021. All are enjoined to give this Circular a wide publicity as possible.



CAESAR R. DULAY

Commissioner of Internal Revenue

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