

SyCipLaw

TIPS

TAX ISSUES AND
PRACTICAL SOLUTIONS

(International Edition)

Supplemental September TIPS

1. Are Registered Business Enterprises (RBEs) in the Information Technology-Business Process Management (IT-BPM) sector allowed to adopt a work from home arrangement beyond September 14, 2022?

Yes. The Fiscal Incentives Review Board (FIRB) issued a Resolution dated September 14, 2022, which further extended the effect of FIRB Resolution No. 17-2022 which temporarily allows RBEs in the IT-BPM sector to adopt a 70-30 work-from-home (WFH) arrangement. RBEs in this sector are allowed to adopt WFH arrangements not exceeding 30% of their total workforce **until December 31, 2022**. With this Resolution, the FIRB recognizes that there is a pressing need to address the request of RBEs in the IT-BPM sector to adopt more flexible work arrangements on a long-term basis. This notwithstanding, RBEs must still comply with the conditions prescribed in the earlier FIRB Resolutions No. 19-21, 17-22, and other relevant issuances.

Under FIRB Resolution No. 17-22, the number of employees under a WFH arrangement must not exceed 30% of the total workforce of the RBE, while the remaining 70% of the total workforce must render work or service within the geographical boundaries of the ecozone or freeport zone being administered by the Investment Promotion Agency (IPA) where the project/activity is registered. The term "total workforce" refers to the total employees that are directly or indirectly engaged in the registered project or activity of the RBE and does not include third-party contractors rendering janitorial or security services and other similar services.

2. Can RBEs in the IT-BPM sector transfer their registration from the IPA administering an economic zone or freeport zone where their project is located, to the Board of Investments (BOI) without losing their tax incentives?

Yes. FIRB Resolution No. 26-2022 has granted RBEs in the IT-BPM sector the option to transfer their registration from the IPA administering an economic zone or freeport zone (e.g., Philippine Economic Zone Authority or PEZA) to the BOI until December 31, 2022. However, only those RBEs with remaining tax incentives under Section 311 of the National Internal Revenue Code (NIRC), as amended, or those with approved incentives on or before September 14, 2022 under the CREATE Act shall be allowed to transfer their registration. Although RBEs registered with the IPA and the BOI would be receiving the same incentives under the CREATE Act, what makes this an attractive option is that RBEs that transfer their registration to the BOI will be able to adopt a 100% WFH arrangement beyond December 31, 2022.

SyCipLaw TIP 1:

RBEs should carefully monitor the 70-30 WFH ratio to continue availing themselves of their fiscal and non-fiscal incentives. Since the FIRB adopted Resolution No. 26-2022 as a temporary measure only, RBEs should be prepared to conduct their operations exclusively within the ecozone or freeport zone once the period allowing the 70:30 WFH arrangement expires on January 1, 2023 to minimize disruptions to their operations and avoid the imposition of penalties under Revenue Memorandum Circular No. 120-2022 (discussed in our [August TIPS](#)).

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The monitoring of the RBE's compliance and availment of their remaining incentives remains with the IPA where they are located even after the transfer of the RBE's registration to the BOI.

SyCipLaw TIP 2:

RBEs in the IT-BPM sector who are unable to comply with the 100% onsite work arrangement by January 1, 2023 should carefully consider the option of transferring their registration to the BOI. Unless further extended by the FIRB, this option granted to RBEs in the IT-BPM sector to transfer registration to the BOI is merely a temporary option and is available only until December 31, 2022. RBEs should act without delay in order to meet the December 31, 2022 deadline to transfer their registration to the BOI.

3. What are the guidelines for the transfer of registration of RBEs in the IT-BPM sector from an IPA to the BOI?

The Department of Trade and Industry (DTI) issued DTI Memorandum [Circular No. 22-19](#) series of 2022 on October 18, 2022, which provides the guidelines on the registration with the BOI of existing RBEs in the IT-BPM sector pursuant to FIRB Resolution No. 26-22. The Philippine Economic Zone Authority (PEZA) issued Memorandum [Circular No. 2022-067](#) (PEZA MC 2022-067) and Memorandum [Circular No. 2022-070](#) providing additional guidelines on the transfer of registration PEZA-registered RBEs to the BOI.

Below are the procedures for the transfer of registration to the BOI:

- 1) The affected RBE must file its request with the concerned IPA using the prescribed Request to Register with BOI Form.

For a PEZA-registered RBE, it should submit the [form](#) on or before **December 16, 2022**, to itbpm.transfer@peza.gov.ph, and attach scanned copies of its PEZA Certificate of Registration and Registration and Supplemental Agreements. The email address itbpm.transfer@peza.gov.ph will no longer be accessible after December 16, 2022.
- 2) The concerned IPA shall [endorse to the BOI Infrastructure and Services Industries Service \(ISIS\)](#) the request and provide the following documents:
 - a) Scanned copy of the RBE's original Certificate of Registration with Terms and Conditions or Agreement issued by the concerned IPA; and
 - b) Scanned copy of the "Request to Register with BOI Form" duly accomplished by the RBE.
- 3) After compliance with the required endorsement and payment of the Php2,250 fee, the BOI will issue the BOI Certificate of Registration indicating the remaining tax incentives and the period of entitlement thereof to the transferee RBE. The BOI Certificate of Registration shall include an annotation of the original IPA Certificate of Registration. The original Certificate of Registration issued by the IPA shall likewise include a corresponding annotation of the BOI Certificate of Registration. The date of effectivity of the BOI registration shall be the date indicated in the official receipt for the payment of the fee.
- 4) The concerned IPA will continue to administer the remaining incentives of the transferee RBEs within the corresponding period of entitlement as indicated in the issued BOI Certificate of Registration.
 - a) PEZA will continue to administer fiscal incentives (i.e., validation of ITH, VAT certifications and other applicable certificates) of the transferee RBEs.
 - b) PEZA will continue to provide the transferee RBEs' non-fiscal incentives (i.e., PEZA Visa, automated importation, issuance of building permits, and others.

- 5) The concerned IPA will monitor the transferee RBEs' compliance with the terms and conditions of registration. The BOI, when necessary, may require the concerned IPA to provide a report on the compliance of the RBEs and their tax incentives availment.

Any findings of violations decided by the concerned IPA or by final resolution of the courts affecting the operations of the project shall be immediately reported by the RBE or concerned IPA to the BOI. Any misrepresentation or falsification in the documents or other supporting papers submitted to the BOI, or failure to maintain qualifications for registration shall constitute a ground for cancellation of the registration.

- 6) The transferee RBE shall ensure that the number of its laptops/other equipment outside the ecozone or freeport does not exceed the number of its employees under the WFH arrangement. Upon approval by IPA, additional laptops/other equipment may be allowed if reasonably needed to perform the registered project or activity. Within 30 days from the issuance of the BOI Certificate of Registration, covered RBEs shall submit to the concerned IPA a list of equipment/other assets brought of the ecozone or freeport, including the quantity, acquisition cost, book value, year of acquisition, and the total number of employees under the WFH arrangement.

For purposes of registration with the BOI, no bond is required for the movement of equipment within and outside the ecozones or freeports.

SyCipLaw TIP 3:

RBEs in the IT-BPM sector who wish to transfer their registration to the BOI are required to secure the endorsement of the IPA, which must certify that the RBE is compliant with the terms and conditions of its registration and is in good standing. RBEs wishing to apply for a transfer of registration should assess their compliance with their Registration Agreement / Supplemental Agreement and the rules and regulations as well as reporting and other obligations with the IPA. Any non-compliance should be promptly remedied to avoid delays in obtaining the favorable endorsement of the IPA.

PEZA MC 2022-067 clarifies that PEZA rules and regulations will continue to apply to the operations of the transferee RBE, including the approval of the Start of Commercial Operations (SCO), submission of reportorial requirements, movement of equipment, importation of equipment, transfer of operations, among others. Further, the transferee RBE shall maintain an office inside the PEZA-registered IT centers or buildings, otherwise, the RBE's PEZA registration with PEZA, and consequently, its registration with the BOI, will be cancelled.

The BOI and concerned IPA, in coordination with the FIRB Secretariat, will, when necessary, provide any additional procedures and mechanisms to carry out the transfer of registration of RBEs in the IT-BPM sector.

After the lapse of the periods of the remaining tax incentives, the existing registered projects of the transferee RBEs will not be entitled to additional incentives but they may be eligible to apply if the activity is listed in the SIPP and there is a new investment or qualified expansion.

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