

CIRCULAR NO. 2018-03
Series of 2018

SUBJECT : Inventory of Board Policies
To : All BOI-registered Enterprises

Board Resolutions and Dates of Adoption	Brief Description	Board Resolution
<p>2017</p> <p>Resolution No. 3-04, Series of 2017 01 February 2017</p>	<p>Provides for revisions in the Affidavit of Undertaking of No Sale for mass housing projects and provides guidelines in evaluating the eligible revenue for a particular taxable year.</p>	<p>RESOLVED, that for purposes of determining whether the firm has incurred sales prior to date of registration and to avoid any confusion on the use of the term "booked sales", the revised Affidavit or Undertaking of No Sale required from the firm in the registration of its mass housing projects, BE APPROVED AND CONFIRMED, which shall now read as:</p> <p>"The company has not received and will not receive any payment for the sale of a unit of its mass housing project, x xx prior to the date of its registration with the Board of Investments."</p> <p>RESOLVED, that for purposes of the application of ITH, the Summary of Sales Revenue supported by the duly notarized Contract to Sell (CTS) SHALL BE UTILIZED by the Incentives Service in determining the eligible revenue for a particular taxable year.</p> <ol style="list-style-type: none"> 1. If based on the accounting method adopted by the firm, the entire amount of the unit is booked as sales, regardless of whether it only actually received 10% or 25% of the total contract price, the entire amount for the said unit, should be entitled to full ITH. 2. If the firm will only book the actual amount received for the particular year, regardless of the percentage to the purchase price of a unit, then ITH will be applied to such extent, provided that the total amount of revenue that will be eligible to ITH during the entitlement period shall not exceed the ceiling price per unit under the governing IPP of such registration. <p>RESOLVED, that for purposes of ITH evaluation, the following shall BE CONSIDERED:</p>

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		Source of Revenue	Time of Recognition	Supporting Documents
		1. HDMF	Upon receipt of Take outs from HDMF	Duly Notarized Contract to Sell, or Certifications from the HDMF of take out dates, or Duly notarized Deed of absolute sale
		2. Banks	Upon receipt of payment from banks	Duly Notarized Contract to Sell, or Certification from the Bank of the payment date, or Duly notarized Deed of absolute sale
		3. Outright Cash Full Payment	Upon receipt of Outright cash full payment	Duly Notarized Contract to Sell or Duly notarized Deed of absolute sale
		4. In-house financing	Upon receipt of at least a certain percentage of payment of the total house & lot package price under the "deferred payment scheme"	Duly Notarized Contract to Sell
		<p>3. If the CTS refers to a Schedule of Payment and forms part of the contract, the dates appearing therein shall also be checked, such as:</p> <ul style="list-style-type: none"> i. Reservation Date ii. Dates/Schedule of Equity Payments on Installment iii. Dates/Schedule of Principal Payments (if in-house financed) <p>4. In the event that any of the above-dates appears to be prior to the date of registration or outside the taxable year being applied for ITH, any revenue arising from the sale of such unit shall be excluded and will not be eligible to any ITH.</p> <p>RESOLVED FINALLY, the BOI SHALL NOT BE PRECLUDED from determining any violation of the firm's Affidavit or Undertaking of No Sale and from pursuing any legal action in accordance with relevant laws, including the cancellation of the registration of the project pursuant to the powers of the Board under Article 7(8) of EO 226.</p>		

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Resolution No. 3-06, Series of 2017, 01 February 2017.	Additional supporting documents to indirect exporters whose clients are non-BOI registered and/or non-economic zone locators and who are applying for ITH.	<p>RESOLVED, that the following additional supporting documents required for submission by indirect exporters whose clients are non-BOI registered and/or non-economic zone locators, BE APPROVED AND CONFIRMED, as follows:</p> <ol style="list-style-type: none"> a. Detailed summary of sales enumerating invoices covering the product(s) sold to direct exporters; b. Certification of raw material composition of exported product issued by the client showing the indirect exporters' product(s) as part of the components; and c. Schedule of export sales of the client, detailing the export invoice numbers, export declaration, bill of lading number and date, product exported, quantity, volume unit, value of export sales in US\$ and PhP. <p>RESOLVED, that the said documents SHALL BE INCLUDED in the Checklist of Requirements for ITH applications.</p>
Resolution No. 17-27, Series of 2017, 12 July 2017.	Policy on the Movement of ITH Reckoning Date due to Inefficiency of other Government Agencies as Force Majeure.	<p>RESOLVED, that as a matter of policy, every request for movement of the ITH reckoning period shall be decided by the Board on a case to case basis taking into consideration the following:</p> <ol style="list-style-type: none"> 1. The firm has not incurred delay in the submission of any documentary requirements imposed by the concerned government agency. The delay will be determined based on the legal period imposed or if not imposed, the "the diligence of a good father of a family" is exercised by the firm. 2. The documentary evidence, e.g. official letters to and duly received by the concerned government agency are presented, including the reply thereof, if any. 3. The burden of proof rests upon the firm. However, the BOI may also inquire from the concerned government agency on the matter. <p>RESOLVED, that the BOI shall not be precluded from considering any other information, data or documents, as may be warranted and confirm with or consult the relevant agencies.</p>
2016		
Resolution No. 19-08, Series of 2016, 13 July 2016.	Provides Clarifications on the Interpretation of Section 2, Rule V of the Implementing Rules and Regulations of Executive Order 182, Series of 2015,	<p>RESOLVED, that the clarification under Section 2, Rule V of the Implementing Rules and Regulations of Executive Order 182, Series of 2015, otherwise referred to as "Providing for A Comprehensive Automotive Resurgence Strategy (CARS Program)," BE NOTED, as follows:</p>

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	<p>otherwise referred to as "Providing for A Comprehensive Automotive Resurgence Strategy (CARS) Program" concerning prohibited activities.</p>	<ol style="list-style-type: none"> 1. Precludes granting program support - FIS and PVI- to "traded parts", <u>defined as locally-sourced but of imported origin</u>, used in the production of the Enrolled Model (in the industry, this is called "pass-thru"parts); 2. Does not prohibit the use of imported raw materials deemed necessary for the production of parts eligible to FIS; 3. Does not prohibit, under force majeure conditions, the use of imported parts in lieu of parts that have availed of FIS, provided that <ol style="list-style-type: none"> a. prior BOI approval is secured, and b. these imported parts will be treated under "N_a" for purposes of LEI computation, where "N_a" = \sum imported parts; 4. Does not preclude after-market sales and export of parts that have availed of FIS. <p>For other conditions - such as raw material supply shortage, logistics bottlenecks, and business failure - the use of imported parts in lieu of parts that have availed of FIS will be subject to evaluation.</p>
2015		
<p>Resolution No. 11-03, Series of 2015, 08 April 2015.</p>	<p>Revenues that are inherent to the operation of the Tourism Entertainment Complex-Educational Theme Park can be included in the ITH.</p>	<p>RESOLVED, that as a matter of policy, revenues that are inherent to the operation of the Tourism Entertainment Complex-Educational Theme Park such as food and beverage sales, merchandise sales from souvenirs, photography revenues, and loyalty card revenues, on spaces actually owned and operated by the Tourism Entertainment Complex-Educational Theme Park can be included in the ITH.</p>
<p>Resolution No. 19-14, Series of 2015, 17 June 2015.</p>	<p>Clarification on the application of Republic Act 8762, otherwise known as the "Retail Trade Liberalization Act of 2000" (RTLA) to foreign online retailers.</p>	<p>RESOLVED, that as a matter of policy, a qualified foreign retailer may undertake online retail provided that the enterprise satisfies the requirements of Republic Act 8762, otherwise known as the "Retail Trade Liberalization Act of 2000" (RTLA), as follows:</p> <ol style="list-style-type: none"> (i) pre-qualification requirements; (ii) the paid-up capital of USD 2,500,000.00. However, on the inclusion of "imputed share" in the computation of the store's total equity must be determined by the appropriate agency; and (iii) the warehouse that shall be treated as its accredited store should meet the minimum paid-up capital requirement per store which is USD 830,000.00.
2014		

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Resolution No. 27-03, Series of 2014, 12 August 2014.	Proof of the actual start of commercial operation of RE projects, eligible or not eligible for FIT rate	<p>RESOLVED, that the following documents shall be required as proof of the actual start of commercial operation of RE projects:</p> <p>a. For grid-connected RE projects eligible for FIT rate:</p> <ul style="list-style-type: none"> • Certificate of Endorsement issued by the DOE to the ERC for FIT Eligibility <p>b. For RE projects that have Power Supply Agreement with Distribution networks/utilities and for grid-connected RE projects that will not eligible for the FIT rate:</p> <ul style="list-style-type: none"> • First Monthly Generation Data Report submitted by the RE Developer to the DOE • Certification from the buyer or the Distribution Utility of the date as to the actual supply and receipt of power from the registered plant under a duly executed Energy Supply Agreement • Such other documents that may be deemed relevant by the Legal Service.
Resolution No. 31-12, Series of 2014, 16 September 2014.	Sets the formula in computing the ITH of existing RE projects applying for modernization	<p>RESOLVED, that as a matter of policy, existing RE projects qualified to be registered under RA 9513 who will apply additional investments or will engage in modernization, the ITH computation will be based on the following formula:</p> $\text{Rate of Exemption (ROE)} = \frac{\text{New Investment (in US\$)}}{\text{Total Investments (replacement cost + new) Relative to the concerned plant (in US\$)}} \times 100$
Resolution No. 35-06, Series of 2014, 21 October 2014.	Policy on the Equity Requirement for Multi-Phase Projects Covered by a Single Registration	<p>RESOLVED, that as a matter of policy on the Equity Requirement for Multi-Phase Projects Covered by a Single Registration, the following BE APPROVED:</p> <p>"For multi-phase projects, the 25% equity requirement shall be based on the annual capital requirement of each phase; Provided that the total equity requirement for the first phase is complied with on the first year of ITH availment; and the corresponding cumulative equity requirement for the succeeding phases is complied with on the first ITH availment of each succeeding phase thereafter. Non-compliance with this policy shall result in forfeiture of ITH incentives for the taxable year".</p>
Resolution No. 40-41, Series of 2014, 17 December 2014.	Adoption of DOJ Interpretation on the investment requirement per store under Section 1(g).	<p>RESOLVED, that as a matter of policy on the interpretation on investment requirement per store relating to franchise fee, the Department of Justice Opinion No. 72, Series of 2014, dated 13 October 2014, provided for the legal interpretation of Section 1(g) Rule</p>

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	Rule I of the Implementing Rules and Regulations of the Retail Trade Liberalization Act of 2000, relating to franchise fee	<p><i>I of the Implementing Rules and Regulations of R.A. No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000 shall apply, to wit:</i></p> <p><i>"Section 1(g), Rule I of the IRR of R.A. No. 8762 is clear that only "investments for common-use investments and facilities shall be pro-rated among the number of stores being served," in the determination of the investment made by a registered foreign retailer in each store or branch. Since the IRR is clear and unequivocal, it must be given its literal meaning and applied without attempted interpretation, in accordance with the established rules of statutory construction.</i></p> <p><i>It is noted that rules and regulations issued by executive or administrative officers pursuant to, and as authorized by, law have the force and effect of laws. These rules and regulations are, in general, subject to the same principles of construction as applied to the construction of statutes. In the construction of statutes, if a statute is clear, plain and free from ambiguity, the rule of verba legis non est recedendum (from the words of the statute there should be no departure) applies.</i></p> <p><i>Since Section 1(g), Rule I of the IRR of RA No. 8762 is clear that only "investments for common-use investments and facilities shall be pro-rated among the number of stores being served," investments constituting tangibles and intangibles that are not "common use investments and facilities such as administrative offices, warehouses, preparation or storage facilities" are not subject to pro-rating among the stores that a registered foreign retailer may open."</i></p>
2013		
Resolution No. 4-7, Series of 2013, 05 February 2013.	Policy on the reckoning date of the 5-year holding period of imported capital equipment by a registered enterprise	<i>As a matter of policy, the five (5)-year holding period for the transfer of imported capital equipment by a registered enterprise should be reckoned from the date of actual usage and not the date of acquisition of the equipment.</i>
Resolution No. 19-02 Series of 2013, 18 June 2013.	Treatment of Provision for Impairment of Input VAT	<i>Provision for impairment of input VAT is not part of income entitled to ITH. This should be claimed from the Bureau of Internal Revenue as a refund and not from BOI.</i>

SECRETARY'S CERTIFICATE

This is to certify that these policies have been approved by the Board of Investments.



ATTY. MARJORIE O. RAMOS-SAMANIEGO
Board Secretary