NATIONAL ADMINISTRATIVE REGISTER · NOVEMBER 7, 2000

# RULES AND REGULATIONS TO IMPLEMENT THE GUIDELINES ON TRANSFERABILITY OF TAX CREDIT CERTIFICATES ISSUED UNDER ARTICLE 21 OF THE OMNIBUS INVESTMENT CODE OF 1987

*DOF, November 07, 2000*

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Pursuant to Sec. 7 of the Memorandum of Agreement (MOA) dated October 13, 2000 executed by and between the Board of Investments and the Department of Finance, the following rules and regulations on the transfer of tax credit certificates issued under Art. 21 of the Omnibus Investment Code are hereby adopted as an integral part of the said MOA:

SECTION 1. The tax credit certificate to be transferred shall be subject to validation upon the filing of request for transfer thereof, through reference to previous basis of its issuance as well as to the findings of the post audit made thereon.

SECTION 2 . The status of the BOI registration of both the transferor and the transferee shall be established based on active records and/or verification with BOI.

SECTION 3. For tax credits on raw materials:

a. The transferee should be a producer of raw materials, supplies or consumables, per its registration with BOI, and it supplies said materials to the transferor who uses said materials in the production of finished products under its own BOI registration.

b. The materials being used as basis for the transfer need not form part of the transferor's finished product, and may include such materials for own production of inputs and utilities.

c. The amount of tax credits to be transferred shall be limited to an inventory level of three (3) months for major materials or six (6) months for minor materials based on the transferor's average monthly consumption of the materials being supplied by the transferee as obtained from the transferor's audited financial statements for the last two (2) years. For this purpose, a material is considered major if its cost reaches at least 10% of the transferor's total raw material cost; otherwise, it is considered minor.

d. For new companies who have not attained two (2) full years of commercial operations, the amount of tax credits to be transferred shall be based on the consumption rate of the materials derived from transferor's BOI registered capacity, subject to the inventory limits set in the preceding paragraph.

e. Projected levels of consumption, for whatever reasons, shall not be accepted as basis for allowing the amount of transfer that exceeds the limits set in the preceding paragraphs.

SECTION 4. For tax credits on domestic capital equipment,

a. The transferee is registered with BOI as manufacturer/producer of the capital equipment, or component or parts thereof which it supplies or has supplied to the transferor.

b. The capital equipment, components or parts subject of the transaction being used as basis for the transfer are or will be used by the transferor for the production of its BOI registered finished product. Construction



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materials for civil works in the transferor's factory/plant buildings as well as equipment for selling and administrative operation of the transferor shall not qualify for transfer purposes.

c. The amount of tax credits to be transferred shall be limited to the actual cost of acquisition of the capital equipment, component or parts declared as basis of the request for transfer.

SECTION 5. For transfers involving supply for materials or equipment, transferors should submit to the Center a liquidation report for each approved transfer, to show the consummation of the transaction used as basis for the transfer, attaching the documents evidencing the same, as well as a report on utilization of the items supplied. The transferor's succeeding request for transfer will only be accepted upon submission of the liquidation report on the previously approved transfer(s) and will only be approved if the report shows that the transferor has consummated the transaction as represented.

SECTION 6. For transfers to parent company, sister companies or affiliates, the transferor and the transferee should establish the basis of the request for transfer through submission of applicable documents, such as SEC papers, secretary's certification, etc. For this purpose, a parent company is one who has a controlling interest in the transferor; sister companies and affiliates are those where either party has substantial interests in the other, or have substantial common ownership, of at least 30% based on either party's stockholdings.

SECTION 7. Companies who have permanently closed their operation must provide proofs of such closure, to include relevant rulings from the Board of Investments, Securities and Exchange Commission, Department of Labor and Employment, Department of Trade and Industry, and other concerned offices that show that the closure is due to valid reasons.

SECTION 8. The documents to be submitted in requesting for transfer of tax credits are:

a. Letter request signed by the highest executive officer of the transferor;
b. Original tax credit certificate and one photocopy;
c. Notarized deed of assignment signed by responsible officers of the transferor and the transferee. This document must state the consideration for the transfer.
d. Secretary's certification on the board resolutions of both parties on the authorized signatories to the deed of assignment;
e. Specific documents to support the consideration for the transfer as stated in the deed of assignment, such as:

— Commercial documents like sales contract, invoices, proforma invoices, covering the trader transaction declared as basis for the transfer;
— Audited financial statements of the transferor for the last two (2) years, with breakdown of manufacturing cost indicating the cost of the particular materials subject of the transfer, if the transfer is based on supply of materials;
— Secretary's certification on the present ownership profiles of the companies, for transfers to related companies;
— Other documents/information as prescribed in the foregoing guidelines.

f. Copy of the BOI registration certificates of both parties;
g. Clearances from BIR and BOC;
h. Liquidation Report on previously approved transfer(s).

## A G R E E M E N T


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**KNOW ALL MEN BY THESE PRESENTS:**

This Agreement made and entered into at City of Manila, Metro Manila, this 13th day of October 2000 by and between the: HDITCS

BOARD OF INVESTMENTS (BOI), with principal office at 385 Sen. Gil Puyat Avenue, Makati; Metro Manila, duly represented herein by Undersecretary RAUL C. HERNANDEZ, Vice-Chairman and Managing Head;

—and—

DEPARTMENT OF FINANCE (DOF), with principal office at Roxas Blvd. Manila, represented herein by Undersecretary CORNELIO C. GISON of the Revenue Operations Group,

**WITNESSETH THAT:**

WHEREAS , under Art. 21 of E.O. 226, otherwise known as the Omnibus Investments Code of 1987, tax credit certificates issued under the said E.O. are transferable under such conditions as may be determined by the Board after consultation with DOF;

WHEREAS , the transferability of said tax credit certificates are presently governed by the guidelines provided for under the Memorandum of Agreement between the herein Parties dated October 5, 1982, as amended by Memorandum of Agreement dated August 29, 1989, also between the herein Parties;

WHEREAS, there are provisions in the said Memoranda of Agreement that require clarification, revision or simplification as a result of new policies and thrusts adopted and being implemented to resolve specific issues and concerns that were raised or identified in the course of implementation of the said guidelines;

WHEREAS, it is necessary, and it is to the best interest of both the private sector as beneficiary, and of the Government as the administrator of the tax credit system, to adopt a consolidated document integrating the existing guidelines and the amendments thereto, for the efficient and effective implementation of the same;

NOW, THEREFORE , for and in consideration of the foregoing premises, the Parties herein, through their respective representatives, do hereby agree and adopt the following guidelines on transferability of tax credit certificates issued to BOI-registered companies under Art. 21 of E.O. 226;

SECTION 1. Tax credit certificates shall be allowed for transfer under conditions stated herein:

a. The tax credit certificate is valid at the time the request for transfer is filed;

b. Both the transferor and the transferee are BOI-registered and their respective registrations have not been cancelled by BOI. Enterprises whose entitlement to tax credits has lapsed under the ten-year limit as provided under Article 2 of EO 226 shall still qualify as transferors or transferees for as long as they remain registered with BOI;

c. For tax credit certificates on raw materials and supplies, the transferee should be a supplier of the transferor of raw materials, supplies and consumables, whether or not forming part of the latter's export products, for as long as these are used by the latter in the production of export products, as registered with the BOI; provided that the amount of tax credit certificate to be transferred shall be limited to the latter's actual consumption of the specific material being declared as basis of the transfer and to acceptable inventory level;

d. For tax credit on domestic capital equipment, the transferee should be a supplier of the transferor of capital equipment, or its components or parts supplied or to be supplied;

e. If the transferee is the parent company, a sister company or an affiliate of the transferor, the transfer of tax


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credit certificates may be allowed, regardless of non-compliance with the conditions as prescribed in the preceding paragraphs c) and d), provided that the transfer is deemed to be a form of assistance to either party currently deemed in distress; provided further that this transfer shall be approved by the Executive Committee of the One Stop Shop for Tax Credit and Duty Drawback Center (the Center);

f. In case an enterprise has permanently closed or permanently stopped its BOI-registered activity for valid reasons as certified by BOI, it may be allowed to transfer its outstanding and valid tax credits only if the transferee is a BOI-registered parent, sister or affiliate company, provided that in the absence of such parent, sister or affiliate companies, the transfer of tax credits to any BOI-registered companies may be allowed if the transferor had operated its BOI-registered activity for at least five (5) years prior to closure; provided further that the transfer will still be allowed under this provision even if the transferor's registration has been cancelled by BOI only if the cancellation is due to the said closure or ceasing of operation and not for any other violations.

SECTION 2. Second transfer from the first transferee of the same transferred tax credit certificates may be allowed only as strategy to assist a distressed industry sector, but never a distressed individual company, upon endorsement by BOI and upon approval as well as adoption of appropriate guidelines by the Executive Committee of the Center;

SECTION 3. All approved transfers of tax credit certificates shall be subject to liquidation.

SECTION 4. The transferee may apply such transferred tax credits as payment of taxes, duties, charges or fees directly due to the national government for as long as the tax credit certificate is valid.

SECTION 5. The request for transfer shall be filed with the Center which shall review compliance of the request to the herein guidelines.

SECTION 6. All requests for transfer of tax credit certificates shall be accompanied by a certification from the Bureau of Internal Revenue and the Bureau of Customs that the transferor has no pending obligations with the said agencies.

SECTION 7. The parties also agree to adopt as an integral part of this Agreement the attached Implementing Rules and Regulations, prescribing specific guidelines for processing and approving transfer of tax credits, including the relevant documents and information to be submitted by the transferor, and the systems and procedures to be followed.

SECTION 8. This Agreement shall take effect fifteen (15) days after publication in a newspaper of general circulation in the Philippines.

SECTION 9. The parties shall consult with each other and with relevant agencies and private sector entities and organizations for the efficient and effective implementation of this Agreement, including review and amendment thereof when deemed necessary.

IN WITNESS WHEREOF, The Parties hereto have signed this Agreement this 13th Day of October, 2000 at the City of Manila, Metro Manila.

**BOARD OF INVESTMENTS**

**DEPARTMENT OF FINANCE**


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(SGD.) RAUL C. HERNANDEZ
Vice-Chairman & Managing Head

(SGD.) CORNELIO C. GISON
Undersecretary

Signed in the Presence of:

(SGD.) OFELIA V. BULAONG
Governor
Board of Investments

(SGD.) ALBERTO S. SALANGA
Executive Director
One Stop Shop Inter-Agency Tax Credit & Duty Drawback Center


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