

Philippines wealth fund won't affect BSP mandate, Medalla says

THE PHILIPPINE central bank's ability to rein in inflation will remain unhampered despite a proposal for the monetary authority to contribute to a wealth fund that could delay its capital increase, according to central bank Governor Felipe M. Medalla.

"Our balance sheet is currently quite strong that postponement of equity infusion will not affect our ability to achieve price and financial stability," Mr. Medalla said in a text message late Tuesday. — **Bloomberg**

FULL STORY



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Vehicle, from SI/1

Passenger car sales were flat, inching up by 0.6% to 77,283 units in the 11-month period.

"The automotive industry underscores the importance of pent-up demand from consumers supported by continued economic recovery,

boosting business and consumer confidence. These, alongside the containment of the pandemic, are significant factors towards sustained growth," Mr. Gutierrez said.

Among car brands, Toyota Motor Philippines Corp. dominated

the industry with a 49.75% market share with 156,874 units sold in the January-to-November period.

Other top car manufacturers include Mitsubishi Motors Philippines Corp. with a 14.81% market share or 46,692 units sold,

followed by Ford Motor Co. Phils., Inc. with a 6.80% share or 21,450 units sold; Nissan Philippines, Inc. with a 6.14% share or 19,373 units sold; and Suzuki Phils., Inc. with a 5.75% share or 18,118 units sold. — **R.M.D.Ochave**



REPUBLIC OF THE PHILIPPINES
 DEPARTMENT OF FINANCE
FISCAL INCENTIVES REVIEW BOARD
 MANILA

FIRB MEMORANDUM CIRCULAR NO. 001-2022

TO : All Investment Promotion Agencies (IPAs), Registered Business Enterprises (RBEs), and other stakeholders

SUBJECT : Rules on Motion for Reconsideration filed under Title XIII of Republic Act (RA) No. 8424, otherwise known as the "National Internal Revenue Code (NIRC) of 1997," as amended by RA 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, and its Implementing Rules and Regulations (IRR), as amended

DATE : 29 November 2022

WHEREAS, Section 297 of Republic Act No. 8424, otherwise known as the "National Internal Revenue Code (NIRC) of 1997," as amended by RA 11534, otherwise known as the "Corporate Recovery and Tax Incentives for Enterprises" (CREATE) Act, provides for the expanded functions and powers of the Fiscal Incentives Review Board (FIRB), including the power to promulgate such rules and regulations as may be necessary to implement the intent and provisions of said Section;

WHEREAS, Section 297(K) of the NIRC of 1997, as amended by the CREATE Act, mandates the FIRB, after due hearing, to decide on issues concerning the approval, disapproval, cancellation, suspension, withdrawal, or forfeiture of tax incentives within ninety (90) days from the date it declares the issues submitted for resolution;

WHEREAS, Section 297(K) of the NIRC of 1997, as amended by the CREATE Act, and Rule 13, Section 12 of the Implementing Rules and Regulations (IRR) of Title XIII of the NIRC of 1997, as amended, state that a business enterprise adversely affected by the decision of the FIRB may, within thirty (30) days from receipt of the adverse decision, appeal the same to the Court of Tax Appeals;

WHEREAS, Our system of laws recognizes and adopts the doctrine of exhaustion of administrative remedies, which states that a person challenging an agency decision must first pursue the agency's available remedies before seeking judicial review, for there are certain matters which are squarely within the competence of such agency to address;

NOW, THEREFORE, To afford due process to business enterprises adversely affected by a decision or action of the FIRB, and in order to effectively carry out the intent and purposes of the CREATE Act and its IRR, the following rules on the filing of a Motion for Reconsideration are hereby adopted:

SECTION 1. Scope. These Rules shall cover the filing of a Motion for Reconsideration by affected business enterprises from adverse decisions or actions rendered by the Board.

The filing of a Motion for Reconsideration from the decision or action of an Investment Promotion Agency (IPA) shall be governed by the provisions of the concerned IPA's charter and its own rules of procedure.

SECTION 2. Period of Filing. A verified Motion for Reconsideration of a decision or action of the Board may be filed by the affected business enterprise within thirty (30) calendar days from receipt thereof. For this purpose, the date of receipt shall refer to the date of actual receipt by the business enterprise of the hard copy, or scanned copy of the decision or action received via email, whichever comes earlier.

In computing any period of time, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, a legal holiday in the place where the office of the FIRB Secretariat is located, or on a day when work suspension in the office of the FIRB Secretariat is declared in whole or in part, the time shall not run until the next working day. No Motion for Reconsideration shall be accepted after the lapse of the period.

The office of the FIRB Secretariat shall be open for the transaction of business and receiving motions and other papers, during the hours from eight o'clock in the morning to five o'clock in the afternoon on Mondays to Fridays except on such days as may be designated by law, proclamation, or other issuance, as non-working days. Receipt by the FIRB Secretariat of hard copy and electronic messages beyond this time shall be considered as received on the next working day.

Only one (1) Motion for Reconsideration from a decision or action of the Board shall be allowed. No motion for extension of time, amended Motion for Reconsideration, or supplement to the Motion for Reconsideration filed shall be entertained.

SECTION 3. Verification - The Motion for Reconsideration is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of the business enterprise, whether in the form of a secretary's certificate or special power of attorney, should be attached to the Motion for Reconsideration, and shall allege the following attestations:

- The allegations in the Motion are true and correct based on his or her personal knowledge, or based on authentic documents;
- The Motion is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and,
- The factual allegations therein have evidentiary support.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the Motion for Reconsideration. A sample format of verification, which may be used as a reference, is provided as an attachment to these Rules.

A Motion for Reconsideration that contains a verification based on "information and belief," or upon "knowledge, information, and belief," or lacks a proper verification, shall be treated as unsigned and may be grounds to deny due course to the Motion for Reconsideration.

SECTION 4. Grounds. The Motion for Reconsideration may be based on any of the following:

- Newly discovered evidence which materially affects the decision or action sought to be reconsidered;
- The decision is not supported by the evidence on record;
- Errors of law or irregularities have been committed prejudicial to the interest of the business enterprise; or,
- The decision or action is contrary to the law.

SECTION 5. Form and Contents of the Motion. The Motion for Reconsideration shall be written in single space with one-and-a-half (1.5) space between paragraphs, using Calibri font style, of 14-size font, and on a 13-inch by 8.5-inch white bond paper. A sample format, which may be used as a reference, is provided as an attachment to these Rules.

The verified Motion for Reconsideration shall contain the following:

- The caption setting forth the name of the Fiscal Incentives Review Board, the title "MOTION FOR RECONSIDERATION," and a blank space where the docket number will be indicated by the FIRB Secretariat;
- The name of the business enterprise as the party to the Motion, its registered project or activity, its IPA-issued Certificate of Registration No., if applicable, the business enterprise's office address, and two (2) official email addresses where notices may be sent electronically;

- Specific material dates showing the timeliness of the filing of the motion;
- Concise statement of the facts, issues, grounds, and arguments relied upon for the motion, clearly addressing each point or finding in the Board's decision or action sought to be reconsidered;
- Evidence in support of the arguments with indication of exhibit markings;
- Relief sought;
- Date; and
- Signature of the party or authorized representative.

The original or certified true copy of documentary evidence, with proper markings indicated, shall be submitted with the Motion for Reconsideration.

Paragraphs shall be numbered for ease of identification.

If the original or certified true copy of the documentary evidence cannot be obtained in time for submission within the period allowed for the filing of the Motion for Reconsideration, the business enterprise shall submit copies of the documentary evidence, if available, or a description of the contents thereof containing the necessary data in support of the purpose for which the documentary evidence is presented, and thereafter submit the original or certified true copy within an additional fifteen (15) calendar days counted from the last calendar date for the period of filing of the Motion for Reconsideration. Documentary evidence, the copies, description, and original or certified true copy of which were not submitted within the required period, may be expunged from the record and may not be considered by the Board in the resolution of the Motion for Reconsideration.

SECTION 6. Manner of Filing. Both hard copies and scanned copies of the verified Motion for Reconsideration and its supporting documents shall be filed.

The business enterprise shall file one (1) original copy, with attached one (1) set of documents in support thereof, including the duly certified true copies of documentary evidence as provided in the preceding section, to the FIRB Secretariat at the office address as found in the official website www.firb.gov.ph.

On the same date as the submission of the hard copy, the business enterprise shall also submit scanned copies of the Motion for Reconsideration and supporting documents which shall be in pdf format and sent via email to the official FIRB Secretariat email address firbsecretariat@ntrc.gov.ph copy furnished to legal@ntrc.gov.ph. The subject of the email should at least include "Motion for Reconsideration" and the name of the business enterprise as the party to the Motion for Reconsideration. Non-compliance may be considered by the Board as a ground to deny due course to the Motion for Reconsideration.

In case of discrepancy between the hard copy and electronic copy versions, the hard copy version shall prevail.

Submission of the hard copy shall be made by:

- Filing personally with the office of the FIRB Secretariat;
- Sending by registered mail; or
- Sending by licensed courier service.

The date of receipt of the hard copy of the Motion for Reconsideration if filed personally, or date of mailing through registered mail or licensed courier service if sent by mail, shall be considered as the date of filing to determine timeliness of filing.

There shall be no payment of any fee required for the filing of the Motion for Reconsideration stated in these Rules.

SECTION 7. Effect of Filing and Reconsideration. Failure to file a Motion for Reconsideration within the prescribed period shall render the decision final. The filing of a Motion for Reconsideration within the prescribed period shall not stay the execution of the decision.

The successful reconsideration by the Board of its decision does not automatically entitle the business enterprise, in whose favor such successful reconsideration was rendered, to the availing of the tax incentives being applied for. The Board, in its discretion, may require the project application to undergo the necessary evaluation and procedures stated in Title XIII of the NIRC of 1997, as amended by the CREATE Act, its IRR, and other relevant guidelines.

SECTION 8. Resolution of the Motion for Reconsideration. The Board may set the case for clarificatory hearing or reception of additional evidence and shall decide on the matters raised in the Motion for Reconsideration within ninety (90) calendar days from the date when the Board declares the issues submitted for resolution. The business enterprise shall be notified when the Board declares the issues submitted for resolution.

The Resolution on the Motion for Reconsideration shall be the decision of the FIRB that is appealable to the Court of Tax Appeals as provided under Section 297(K) of the NIRC of 1997, as amended by the CREATE Act, and Rule 13, Section 12 of its IRR.

The FIRB Secretariat shall send a scanned copy of the Resolution in pdf format to the official email addresses of the business enterprise as indicated in the Motion for Reconsideration, copy furnished the concerned IPA. Service through such email address shall be presumed valid unless the business enterprise makes prior notification to the FIRB Secretariat of any change in email address.

Should the electronic transmission be unsuccessful, such as when the FIRB Secretariat receives a notification of delivery failure for any reason, including, but not limited to, size or file limitations, the proof of unsuccessful transmission shall be forwarded to the IPA concerned. Such IPA shall be responsible for sending the notice and copy of the Resolution to the business enterprise.

A certified true copy of the Resolution may be requested by the business enterprise or the IPA concerned by sending a reply to the email. The requesting party, or an authorized representative, may opt to personally collect the certified true copy of the Resolution at the office of the FIRB Secretariat or request that the certified true copy be sent through registered mail or a licensed courier service, at the requesting party's cost.

SECTION 9. Appeal to the Court of Tax Appeals. If the Motion for Reconsideration is denied in whole or in part, or is not acted upon within ninety (90) calendar days from the date when the Board declares the issues submitted for resolution, a business enterprise adversely affected by the Resolution or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the Resolution or the lapse of the ninety (90)-day period. The filing of the appeal within the prescribed period shall not stay the execution of the Resolution unless the court orders otherwise. Failure to appeal within the prescribed period shall render the Resolution final and executory.

For this purpose, the date of electronic transmission of the Resolution to the business enterprise or, should the transmission fail, the date of electronic transmission to the IPA of the proof of unsuccessful transmission, shall be considered as the date of receipt.

SECTION 10. Applicability of other Rules. The Revised Rules of Court, Rules on Electronic Evidence, and Implementing Rules and Regulations of Title XIII of RA 8424 otherwise known as the "NIRC of 1997," as amended shall apply supplementarily to these Rules.

SECTION 11. Role of the Fiscal Incentives Review Board Secretariat. The FIRB Secretariat shall, at all times, assist the Board in the receipt and evaluation of the Motion for Reconsideration and its supporting documents filed pursuant to these Rules, and in the preparation of the Board's Resolution.

Upon receipt of the Motion for Reconsideration, the FIRB Secretariat shall docket and assign a number to it. The numbering of the Motions for Reconsideration must be consecutive according to the date they are received, and prefixed as follows:

FIRB Case No. (Year) – (Number)

The FIRB Secretariat shall inform the IPA concerned of the fact of filing of the Motion for Reconsideration, and request such Agency's endorsement, comments, or objections, if any.

The FIRB Secretariat may set clarificatory meetings or request additional documents from the business enterprise and/or the concerned IPA for a more effective disposition of the case. The business enterprise shall indicate the docket number in all additional documents filed as requested by the FIRB Secretariat.

SECTION 12. Transitory Provisions. All business enterprises affected by adverse decisions or actions rendered by the Board prior to the effectivity of these Rules shall be allowed to file a Motion for Reconsideration within thirty (30) calendar days from the effectivity of these Rules.

Business enterprises that have re-filed project applications previously denied or have already submitted any other documents in response to a denial of an application, shall be treated as a Motion for Reconsideration, provided, however, that the re-filed project application or any similar documents submitted, contain and address the specific grounds for denial of the application. If the business enterprise has not specifically addressed the grounds for denial, it shall be allowed to file, within thirty (30) calendar days from the effectivity of these Rules, a document specifically addressing the grounds, including the submission of any supporting document in addition to that already filed.

SECTION 13. Separability Clause. If any provision or part of these Rules is held invalid or unconstitutional, the provisions not otherwise affected shall remain valid and subsisting.

SECTION 14. Repealing Clause. The provisions of FIRB Resolution No. 10-21 dated 2 June 2021 inconsistent with these Rules are hereby superseded. All circulars, memoranda, and issuances of the FIRB or parts thereof which are inconsistent with any provision of these Rules are hereby deemed repealed or modified accordingly.

SECTION 15. Effectivity. These Rules shall take effect fifteen (15) calendar days following its publication in a newspaper of general circulation or the Official Gazette, whichever comes earlier.

JUVY C. DANOFRATA
 Assistant Secretary of Finance
 Head of FIRB Secretariat

FISCAL INCENTIVES REVIEW BOARD
MOTION FOR RECONSIDERATION
 DOCKET NUMBER: _____

NAME OF BUSINESS ENTERPRISE: ABC COMPANY INC.
 REGISTERED PROJECT OR ACTIVITY: xxx
 IPA CERTIFICATE OF REGISTRATION: 1234-5678

TIMELINESS

- On xxx
- On xxx
- Hence, xxx

STATEMENT OF FACTS

- On xxx
- On xxx
- ABC Company xxx

ISSUES

- Whether xxx
- Whether xxx

GROUND

- There is xxx
- There is xxx

ARGUMENTS

- ABC Company is entitled xxx
- As shown by xxx and xxx

RELIEF

WHEREFORE, it is respectfully prayed that the Board reconsider its decision dated xxx and declare that xxx

Date

Name and signature of authorized representative
 Designation
 Official email addresses

REPUBLIC OF THE PHILIPPINES)
 _____) S.S.

VERIFICATION

I, (Full Name), (Civil Status), (Age), (Citizenship), of legal age and with registered business address at _____ after being sworn in accordance with law, do hereby depose and state the following:

- I am the owner/authorized representative/other designation of (Name of Business Enterprise) and have caused the preparation of this Motion for Reconsideration ("Motion").
- The allegations in the Motion are true and correct based on my personal knowledge and/or based on authentic documents.
- The Motion is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- The factual allegations therein stated have evidentiary support.

IN WITNESS WHEREOF, I have hereunto affixed my signature this _____ at _____, Philippines.

 Affiant

SUBSCRIBED AND SWORN to before me, in _____ on the _____ day of _____, YYYY affiant exhibiting to me his/her _____ with number _____ issued _____ as competent proof of identity.

Doc. No. _____;
 Page No. _____;
 Book No. _____;
 Series of YYYY.