



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC2021-12-0042 *JK*

**PRESCRIBING AMENDMENTS TO SECTIONS 13(E) AND 18(C) OF
DEPARTMENT CIRCULAR NO. DC2009-05-0008, ENTITLED RULES AND
REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513,
OTHERWISE KNOWN AS "THE RENEWABLE ENERGY ACT OF 2008"**

WHEREAS, Section 2(b) of Republic Act No. 9513, Renewable Energy Act of 2008 (the "RE Law") provides the State policy to increase the development and utilization of renewable energy by promoting its efficient and cost-effective commercial applications through the provisions of fiscal and nonfiscal incentives;

WHEREAS, pursuant to Section 33 of the RE Law, the Department of Energy ("DOE") promulgated DC No. 2009-05-0008, the Rules and Regulations Implementing Republic Act No. 9513 (the "RE Law IRR") on 25 May 2009;

WHEREAS, consistent with Section 15(e) of the RE Law, Section 13(E) of the RE Law IRR provides that the requisite for the entitlement of the ten percent (10%) corporate income tax is the registration of the RE Developer with the DOE and the issuance of the DOE Certificate of Registration;

WHEREAS, Section 13(E) of the RE Law IRR provides that an appropriate mechanism shall be developed by the Energy Regulatory Commission ("ERC"), in coordination with the DOE, to implement the power rate reduction;

WHEREAS, in implementing Section 26 of the RE Law, Section 18(C) of the RE Law IRR requires RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment to secure a "*Certificate of Endorsement from the DOE, through the Renewable Energy Management Bureau ("REMB"), on a per transaction basis*" to avail of the incentives provided under the RE Law;

WHEREAS, Republic Act No. 11032 or the Ease of Doing Business Act and Republic Act No. 11234 or the Energy Virtual One Stop Shop or EVOSS Law were passed mandating the streamlining of government processes and eliminating red tape in government transactions to promote the ease of doing business; and

WHEREAS, cognizant of the need to address implementation gaps, promote efficiency in government processes, and ensure that fiscal incentives are properly availed of, the DOE deemed it necessary to amend Section 13(E), and Section 18(C) of the RE Law IRR.

NOW THEREFORE, for and in consideration of the foregoing, the DOE hereby issues, adopts and promulgates the following amendments to the RE Law IRR:

Section 1. AMENDMENT TO SECTION 13(E) OF THE RE LAW IRR. Section 13(E) of DC No. DC2009-05-0008 is hereby amended to read as follows:

E. Corporate Tax Rate

After availment of the ITH, all Registered RE Developers shall pay a corporate tax of ten percent (10%) on their net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended.

All RE Developers that acquire, operate, and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall pay a corporate tax rate of 10% on their net taxable income, upon registration with the DOE.

PRIOR TO THE FIRST YEAR OF THE REGISTERED RE DEVELOPER'S AVAILMENT OF THE CORPORATE TAX RATE INCENTIVE, THE DOE SHALL ISSUE A CERTIFICATE OF ENDORSEMENT; PROVIDED, THAT THE REGISTERED RE DEVELOPER, AT THE TIME OF THE AVAILMENT, HOLDS A VALID AND SUBSISTING RENEWABLE ENERGY SERVICE/OPERATING CONTRACT AND ITS CORRESPONDING CERTIFICATE OF REGISTRATION, AND HAS NOT BEEN FOUND IN DEFAULT OR HAS NOT BEEN FOUND TO HAVE BREACHED OF ITS OBLIGATIONS UNDER SUCH RENEWABLE ENERGY SERVICE/OPERATING CONTRACT; PROVIDED, FURTHER, THAT THE REGISTERED RE DEVELOPER SUBMITS A SWORN UNDERTAKING TO PASS ON THE SAVINGS DERIVED FROM THIS INCENTIVE TO THE END-USERS IN THE FORM OF LOWER POWER RATES.

IN THE YEARS SUCCEEDING ITS AVAILMENT OF SAID INCENTIVE, THE REGISTERED RE DEVELOPER SHALL SUBMIT TO THE DOE, AND THE ERC, A REPORT, PROVING THAT IT HAS, DURING THE PREVIOUS YEAR, PASSED ON THE SAVINGS DERIVED FROM THIS INCENTIVE TO THE END-USERS IN THE FORM OF LOWER POWER RATES. SAID REPORT SHALL BE MADE UNDER OATH, AND SUPPORTED BY ANY OF THE FOLLOWING TECHNICAL AND FINANCIAL DOCUMENTS:

- (1) SALES REPORTS FOR THE YEARS THE ITH WAS AVAILED OF;
- (2) COMPARATIVE FINANCIAL STATEMENTS SHOWING THE REGISTERED RE DEVELOPER'S

ESTIMATED NET INCOME WITH AND WITHOUT THE CORPORATE TAX RATE INCENTIVE;

- (3) ANNUAL SALES FORECASTS;
- (4) ESTIMATED DEDUCTIONS OF THE TAX SAVINGS FROM THE GROSS REVENUE;
- (5) SAVINGS DERIVED FROM THE AVAILMENT OF THE REDUCED CORPORATE TAX PASSED TO END-USERS HAVE BEEN FACTORED INTO THE OFFERS MADE IN THE COMPETITIVE SELECTION PROCESS, WHOLESALE ELECTRICITY SPOT MARKET, THE COMPETITIVE RETAIL MARKET, AND OTHER PROGRAMS DEVELOPED BY THE DOE; AND
- (6) OTHER DOCUMENTS THAT PROVES THAT THE REGISTERED RE DEVELOPER HAS PASSED ON THE SAVINGS DERIVED FROM THIS INCENTIVE TO THE END-USERS IN THE FORM OF LOWER POWER RATES;

IN THE CASE OF THE POWER SUPPLY AGREEMENT (PSA) WITH A DISTRIBUTION UTILITY OR ANCILLARY SERVICE PROCUREMENT AGREEMENT (ASPA) WITH THE SYSTEM OPERATOR, THE SAME SHALL HAVE BEEN APPROVED (WHETHER FINAL OR PROVISIONAL) BY THE ERC; PROVIDED THAT, THE ERC SHALL ENSURE THAT SUCH PSA AND/OR ASPA RATE WAS DETERMINED THROUGH A COMPETITIVE PROCESS AND THAT THE ERC HAS ALREADY TAKEN INTO ACCOUNT THE ENTITLEMENT OF THE CORPORATE TAX RATE INCENTIVE. THE REPORT OF THE REGISTERED RE DEVELOPERS MUST INCLUDE A STATEMENT THAT THE INCENTIVE IS ALREADY INCORPORATED IN THE PSA AND/OR ASPA.

THE DOE SHALL MONITOR THE REGISTERED RE DEVELOPERS' COMPLIANCE THROUGH THE CONDUCT OF A RANDOM REVIEW OF THE ANNUAL REPORTS. IF, AT ANY POINT, THE REGISTERED RE DEVELOPER FAILS TO PROVE THAT IT HAS PASSED ON THE SAVINGS DERIVED FROM THIS INCENTIVE TO THE END-USERS IN THE FORM OF LOWER POWER RATES, THIS SHALL BE A GROUND FOR THE CANCELLATION/WITHDRAWAL BY THE DOE OF ITS ENDORSEMENT.

Section 2. AMENDMENT TO SECTION 18(C) OF THE RE LAW IRR. Section 18(C) of DC No. DC2009-05-0008 is hereby amended to read as follows:

"SEC. 18. Conditions for Availment of Incentives and Other Privileges.

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C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS

RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.

RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS.

CONSISTENT WITH THE MANDATE UNDER THE REPUBLIC ACT NO. 11032 AND REPUBLIC ACT NO. 11234, the DOE MAY issue guidelines to further STREAMLINE the procedures and requirements for the availment of incentives FOR RE DEVELOPERS OR MANUFACTURERS, FABRICATORS, AND SUPPLIERS OF LOCALLY-PRODUCED RE EQUIPMENT IN GOOD STANDING, AS DETERMINED based on specific criteria, such as, but not limited to:

- (1) **Compliance with Obligations** – The RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall observe and abide by the provisions of the Act, this IRR, the applicable provisions of existing Philippine laws, and take adequate measures to ensure that its obligations thereunder as well as those of its officers are faithfully discharged;
- (2) **Compliance with Directives** – The RE Developer or manufacturers, fabricators, and suppliers of locally- produced RE equipment shall

comply with the directives and circulars which the DOE may issue from time to time in pursuance of its powers under the Act;

- (3) **Compliance with Pre-Registration/Registration Conditions** – The RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with all the pre-registration and registration conditions as required by the DOE;
- (4) **Compliance with Reportorial Requirements** – An RE Developer shall maintain distinct and separate books of accounts for its operations inside the RE facilities and shall submit technical, financial and other operational reports/documents to DOE on or before their respective due dates; and
- (5) **Remittance of Government Shares and Payment of Applicable Financial Obligations** – An RE Developer shall observe timely remittance of Government Share, and payment of applicable fees and other financial obligations to the DOE.

RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment who comply with the above requirements shall be deemed in good standing and shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR.

FAILURE BY THE RE DEVELOPER, MANUFACTURER, FABRICATOR, OR SUPPLIER OF LOCALLY-PRODUCED RE EQUIPMENT TO COMPLY WITH THE ABOVEMENTIONED CRITERIA SHALL BE SUFFICIENT GROUND FOR THE TERMINATION/CANCELLATION OF ITS RE CONTRACT AND CERTIFICATE OF REGISTRATION. TO THIS END, REMB SHALL CLOSELY MONITOR THE COMPLIANCE BY RE DEVELOPERS OF THE ABOVE CRITERIA AND MAY CAUSE THE CANCELLATION OF CERTIFICATES FOR NON-COMPLIANCE THEREWITH.

Section 3. AUTOMATIC REVIEW. THIS CIRCULAR MAY BE REVIEWED AND REVISED ACCORDINGLY TO ENSURE THAT THE OBJECTIVE TO ATTAIN LOWER PRICES IS ACHIEVED.

Section 4. SEPARABILITY CLAUSE. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and existing.

Section 5. REPEALING CLAUSE. All issuances inconsistent with the provisions of this Circular are hereby repealed or amended accordingly.

Section 6. EFFECTIVITY. This Circular shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation and submission to the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).


ALFONSO G. CUSI
Secretary

Issued on DEC 24 2021 at Energy Center, Bonifacio Global City, Taguig City.

