REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RA No. 9728; RA No. 11453; Section 108(B)(3) of the NIRC, as amended;
RR No. 16-2005; RMC No. 50-2007
BIR Ruling No. 750-18
CT-155-2021 MAY 04 2021

PETRON CORPORATION
SMC Head Office Complex,
40 San Miguel Avenue,
Mandaluyong City

Attention: **EMMANUEL E. ERAÑA**
SVP, Chief Finance Officer

Gentlemen:

This refers to your letter dated January 18, 2021 requesting on behalf of Petron Corporation ("**PETRON**") for a confirmatory ruling that **PETRON,** being a Freeport Area of Bataan (FAB) Registered Enterprise as shown by the Certificate of Registration No. 2021-077 with the supporting Certificate of Tax Incentives, both issued by the Authority of the Freeport Area of Bataan (AFAB) on December 28, 2020,, is entitled to the following fiscal incentives pursuant to the provisions of Republic Act (RA) No. 9728[1], also known as "The Freeport Area of Bataan Act of 2009," as amended by RA No. 11453[2], to wit:

a. Tax and duty-free importation of merchandise which include raw materials, capital equipment, machineries and spare parts;
b. Exemption from export wharfage dues, export taxes, imposts, and fees; and
c. VAT zero-rating of local purchases subject to compliance with the requirements of the Bureau of Internal Revenue (BIR) and the Authority of the Freeport of Bataan (AFAB).

It is represented that **PETRON** (Tax Identification No.), is a domestic corporation organized and existing under the laws of the Philippines. It has a branch located at Alangan, Limay, Bataan, (hereinafter referred to as ***Petron Bataan Refinery***) which was issued the following permits: (1) Permit to Operate No. ELTRD (P)-028-12-20-33871 and (2) Commingling Permit No. ELTRD (P)-028-12-20-33890[3] both issued on December 22, 2020 and valid until December 31, 2021.

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[1] An Act Converting the Bataan Economic Zone Located in the Municipality of Mariveles, Province of Bataan, into the Freeport Area of Bataan (FAB), Creating for this Purpose the Authority of the Freeport Area of Bataan (AFAB), Appropriating Funds therefor and for other Purposes.

[2] An Act Further Strengthening the Powers and Functions of the Authority of the Freeport Area of Bataan (AFAB), Amending for this Purpose Republic Act No. 9728, Otherwise Known as the "Freeport Area of Bataan (FAB) Act of 2009".

[3] Permit to commingle imported tax-paid fuel/petroleum products with manufactured products not subjected to excise tax at Limay, Bataan

It is further represented that **PETRON** is engaged in the importation of crude oil through Petron Bataan Refinery. The crude oil is processed into a full range of petroleum products, such as gasoline, diesel, Jet A1 fuel, LPG, etc. In certain instances, **PETRON** resorts to importation of finished petroleum products, such as when the projected local production of specific petroleum products is not sufficient to supply the respective projected demand, or when Petron Bataan Refinery is on total plant shutdown due to repairs and maintenance. All finished petroleum products, both locally-produced and imported, are withdrawn from the Petron Bataan Refinery and are delivered either directly to domestic and foreign customers or to Petron's terminals in various locations throughout the country for eventual sale and delivery to various customers, including tax-exempt entities. In addition, **PETRON** imports various machinery, equipment, spare parts necessary for the Petron Bataan Refinery's operation, repair and maintenance.

Pursuant to the provisions of RA No. 9728, as amended by RA No. 11453, the AFAB has declared the Petron Bataan Refinery located at Limay, Bataan as a Freeport Area of Bataan (FAB) Expansion Area. Likewise, **PETRON** has been approved as a FAB Registered Enterprise within the FAB Expansion Area effective December 28, 2020, as evidenced by Certificate of Registration No. 2021-077 issued by the AFAB. The scope of PETRON's registered business activity is:

> "operation of oil refinery facility with the primary purpose to purchase or otherwise acquire, store, hold, transport, use, experiment with, market, distribute, exchange, sell and otherwise dispose of, import, export, handle, trade and generally deal in, refine, treat, reduce, distill, manufacture and smelt any and all kinds of petroleum and petroleum products, oil, gas, and other volatile substance, ozokerite, sulphur, days, bituminous substances, carbon, carbon black, hydrocarbon substances of all grades, kinds, forms, descriptions and combinations, and in general, sub oil products and subsurface deposits of every nature and description and the products and by-products which may be derived, produced, prepared, developed, compounded, made or manufactured therefrom and substances obtained by mixing any of the foregoing with other substances; and to purchase, create, generate or otherwise acquire, use, sell, supply or otherwise dispose of, electric current and electric steam and water power of every kind and description and to sell, supply or otherwise dispose of light, heat and power of every kind and description at the Freeport Area of Bataan (FAB)."

On the basis of such registration, **PETRON** has been declared lawfully entitled to rights, privileges, benefits and/or incentives granted under RA No. 9728.

In reply thereto, please be informed as follows:

Tax and Duty-Free Importation of Merchandise which Include Raw Materials, Capital Equipment, Machineries and Spare Parts

RA No. 9728, as amended by RA No. 11453 provides:

> *"Sec. 4. Governing Principles. — The FAB shall be managed and operated under the following principles:*
>
> *xxx* *xxx* *xxx*

(e) The FAB shall be managed and operated as a separate customs territory ensuring free flow or movement of goods and capital within, into and out of its territory: xxx xxx xxx

(f) The FAB shall provide incentives such as tax and duty-free importations of raw materials, capital and equipment to registered enterprises located therein. However, exportation or removal of goods from the territory of the FAB to the other parts of the Philippine territory' shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code (NIRC) of 1997, as amended;

xxx xxx xxx" (Underscoring supplied)

Further, Section 55 of the Rules and Regulations implementing the provisions of RA No. 9728, as amended, provides:

"SECTION 55. Tax and Duty Exemption. — In general, all articles may be imported by FAB Registered Enterprises into the FAB free of customs and import duties and national internal revenue taxes, subject to pertinent laws, rules and regulations. xxx xxx xxx

Importation to FAB

With regard to the importation of foreign articles, such as raw materials, capital equipment, machineries and spare parts, into the FAB, as long as the articles remain in the FAB or re-exported to another foreign jurisdiction, they shall continue to be tax-free.

In a case decided by the Supreme Court, it ruled that when goods are brought into a Freeport Zone, **the goods remain to be in foreign territory** and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws. The Supreme Court further explained that "stated differently, goods brought into and traded within a Freeport zone are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to Freeport Zones exempting the *importation itself* from taxes and duties." *[Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto- Henares vs. Representative Carmelo F. Lazatin and Economic Plastic Enterprises Corporation, G.R. No. 210588 (2016)]*

Therefore, under RA No. 9728, as amended by RA No. 11453, FAB is considered a customs territory separate and distinct from the Philippine customs territory. As long as the goods remain in the FAB or re-exported to another foreign jurisdiction, the importation shall continue to be tax-free. However, when goods are removed from the territory of the FAB and brought to other parts of the Philippine territory, they shall be subject to applicable taxes under the Tax Code of 1997, as amended. Thus, the act of bringing in goods into the FAB is not a taxable importation and shall not be subject to taxes imposed upon importations into the Philippine customs territory.

Sale, Barter, Exchange or Lease of Goods, Properties, and Sale or Exchange of Services within the FAB/ From FAB To Another Freeport Zone/ For Direct Export

Anent the sale, exchange, barter or lease of goods, properties and sale or exchange of services within the FAB or from the FAB to another freeport zone or for direct export, the same are not subject to value-added tax (VAT).

Transactions Within FAB

Revenue Memorandum Circular (RMC) No. 50-2007 provides that:

"SECTION 3. CLARIFICATORY QUESTIONS AND ANSWERS. –

xxx xxx xxx

Q6: Since the Freeport Zones are considered as foreign soil and therefore, a separate tax jurisdiction, what is the VAT treatment of sale, exchange, barter or lease of goods, properties and/or services by a Freeport Zone-registered enterprise or Resident within the Freeport Zone?

*A6: **Such sale, exchange, barter or lease of goods, properties and services within the subject Freeport Zones shall be exempt from VAT**. The following transactions are covered under this exemption:*

a. All transactions between and/or among two registered Freeport Zone Enterprises or Residents;
b. Consumer goods purchased and consumed within the Freeport Zones;
c. Sale/supply of services, including power or electricity, by a Freeport Zone - registered enterprise or resident within the Freeport Zone , regardless of whether or not the buyer or customer is a registered Freeport Zone enterprise or Zone Resident, provided that said power/ electricity or services are rendered, used or consumed within the Freeport Zone; and
d. The lease of properties owned by Freeport Zone-registered enterprises or Residents, provided that such properties are located within the subject Freeport Zones.

xxx xxx xxx

Q9: What is the tax treatment of a sale of service or lease of properties (machineries and equipment) by Freeport Zone-registered enterprises to a customer or lessee from the Customs Territory?

A9: *The **sale of service** shall be **exempt from VAT** if the service is **performed or rendered within the Freeport Zone**.*

*The **lease of properties**, on the other hand, shall likewise be **exempt from VAT** if the **property is located within** the Freeport Zone. However, if the properties (machineries and equipment) leased by the Freeport Zone- registered enterprise is located outside of the Freeport Zone, payments to such enterprise will be considered as royalties and subject to the final withholding VAT of 12%.*

xxx xxx xxx"

It is, thus, clear under RMC No. 50-2007 that the sale, exchange, barter or lease of goods, properties and services within the FAB shall be exempt from VAT subject to the following conditions, to wit:

a. For sale, barter or exchange of consumer goods, it must be purchased and consumed within the FAB;
b. For sale of services, it must be rendered or performed within the FAB; and
c. For lease of properties, including machineries and equipment, the property must be located within the FAB. *(BIR Ruling No. 750-2018)*

Transactions From FAB to Another Freeport Zone and Direct Export

The Supreme Court reiterated the government's policy governing Freeport Zones under RA No. 7227 of "converting into alternative productive uses, former military reservations and their extensions, as well as providing them incentives to enhance the benefits that would be derived from them in promoting economic and social development." These Freeport Zones therefore, by legal fiction, are regarded as foreign territories. This legal fiction is necessary to give meaningful effect to the policies of the special law creating the said Freeport Zone. (*CIR vs. Seagate Technology (Philippines), G.R No. 153866, February 11, 2005 and CIR vs. Toshiba Information Systems (Philippines) Inc., G.R. NO. 150154, August 9, 2005*)

In pursuance to said policy, as long as the goods remain within the freeport zone or exported to foreign countries or to other freeport zone regarded as a foreign territory, the same shall not be subject to VAT.

Exemption from Export Wharfage Dues, Export Taxes, Imposts, and Fees

The powers and duties of Bureau of Internal Revenue only comprehend the assessment and collection of national internal revenue taxes, fees, and charges. Hence, the Commissioner of Internal Revenue has no power to interpret the provisions relating to export wharfage dues, export taxes, impost and fees, which is vested with the Commissioner of Customs. Hence, we suggest to address the matter to the Bureau of Customs.

VAT Zero-Rating of Purchases from the Customs Territory into the FAB

As regards local purchases by FAB registered entities from the customs territory, please be informed that the Philippine VAT system adheres to the "cross border doctrine", which basically means that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the Philippine customs territory.

The Supreme Court has consistently ruled that "(u)nder the cross border principle of the VAT system being enforced by the Bureau of Internal Revenue (BIR), no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. If exports of goods and services from the Philippines to a foreign country are free of the VAT, then the same rule holds for such exports from the national territory — except specifically declared areas — to an Ecozone, or in this case, a Freeport Zone. (*CIR vs. Seagate and CIR vs. Toshiba; ibid*)

Moreover, Section 108 (B) (3) of the NIRC, as amended, states that:

"Section 108. Lease of Properties. — Value-Added Tax on Sale of Services and Use or Lease of Properties. —

xxx *xxx* *xxx*

(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx *xxx* *xxx*

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which

the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

Revenue Regulations (RR) No. 16-2005, as amended, implementing the above-quoted provision states:

"SECTION 4.108-5. (a) Zero-Rated Sale of Services. —

(a) Zero-Rated Sale of Services. — In general. — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.

b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

Furthermore, RMC No. 50-2007 also provides:

"SECTION 3. CLARIFICATORY QUESTIONS AND ANSWERS.-

Q1: How will the sale, barter or exchange of goods or properties into the Freeport Zone by suppliers/contractors from the Customs Territory be considered?

A1: Such transactions shall be considered as export sales in accordance with RA No. 7227, as amended by RA No. 9400, which provides that the Freeport Zones shall be operate and managed as a separate customs territory.

Moreover, Executive Order (EO) No. 226 provides that sales from the Customs Territory to export processing zones are considered "export sales".

Q2: What will be the treatment of sale, barter, exchange or lease of goods, properties and sale or exchange of services to a registered Freeport Zone enterprise by sellers/contractors from the Customs Territory?

A2: If the seller is a VAT taxpayer, such sale, barter or exchange shall be subject to VAT at zero (0%) percent. If the seller is a non -VAT taxpayer, the transaction shall be exempt from VAT.

Q3: What is meant by a "zero-rated" sale and an "exempt" sale?

A3: A zero-rated sale of goods, properties and/or services (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with existing regulations. Under this type of sale, no VAT shall be shifted or passed-on by VAT-registered

sellers/suppliers from the Customs Territory on their sale, barter or exchange of goods, properties or services to the subject registered Freeport Zone enterprises.

A VAT-exempt transaction, on the other hand, refers to the sale of goods, properties or services or the use or lease of properties that is not subject to VAT (output tax) under Section 109 of the Tax Code of 1997, and the seller/supplier is not allowed any tax credit of VAT (input tax) on purchases related to such exempt transaction.

xxx *xxx* *xxx*

Q5. What is the coverage of VAT zero-rating?

A5. The zero-rating will cover sale, barter, exchange or lease of all goods, properties and/or services by a VAT-registered seller/contractor from the Customs Territory to a Freeport Zone-registered enterprise and shall include, among others, the following:

a. The sale/supply of ordinary cars, vehicles, automobiles, specialized vehicles or other transportation equipment, provided that these are used exclusively within the subject special Freeport Zones;
b. The lease of properties by VAT-registered lessors, provided that such properties are located within the subject Freeport Zones;
c. The sale/supply of electricity by the National Power Corporation ("NPC") or by any other VAT-registered seller/supplier from the Customs Territory, to any registered Freeport Zone enterprise engaged in the distribution of power or electricity within the subject Freeport Zones; and
d. The sale/supply of services, provided such services are rendered or performed within the Freeport Zone"

Based on the foregoing, if the seller from the customs territory is a VAT registered taxpayer, the sale, barter, exchange, lease of goods, properties and sale or exchange of services into the FAB shall be subject to VAT at rate of zero (0%) percent. However, if the seller is registered as a non-VAT taxpayer, the transaction shall be exempt from VAT.

Transactions from FAB into the Customs Territory are Subject to Applicable Taxes

RA No. 9728, as amended by RA No. 11453 provides:

"Sec. 4. Governing Principles. — The FAB shall be managed and operated under the following principles:

(f) The FAB shall provide incentives such as tax and duty-free importations of raw materials, capital and equipment to registered enterprises located therein. *However, exportation or removal of goods from the territory of the FAB to the other parts of the Philippine territory' shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code (NIRC) of 1997, as amended;*

xxx *xxx* *xxx" (Emphasis supplied)*

Moreover, Section 57 of the Rules and Regulations implementing RA No. 9728, as amended, provides as follows:

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"SECTION 56. Articles Removed or Withdrawn from FAB. — Notwithstanding the above-mentioned tax and duty exemptions, foreign articles removed, withdrawn or otherwise disposed of from the FAB into the Customs Territory, shall be subject to the payment of customs duties and internal revenue taxes as ordinary importations in accordance with the provisions of the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code, as amended, and other applicable laws.

Articles entered or introduced from the FAB into the Customs Territory will be presumed to be foreign unless there is sufficient evidence presented to satisfy customs officials that they are domestic articles as defined in these Rules."

In relation thereto, RMC 50-2007 provides:

"SECTION 3. CLARIFICATORY QUESTIONS AND ANSWERS.-

xxx *xxx* *xxx*

Q8: What is the tax treatment of sale, barter or exchange of goods and properties by Freeport Zone-registered enterprises to a buyer from the customs territory? (i.e. from the Freeport Zone into the Customs Territory)

*A8: The sale, barter or exchange shall be treated as a **technical importation** made by the buyer in the customs territory. The buyer shall be treated as the importer and shall be imposed the corresponding import taxes and duties prior to release of the goods or merchandise from Customs custody. Any unpaid taxes thereon, aside from being the prime liability of the buyer-importer, shall constitute a lien on such goods or merchandise imported from the Freeport Zone.*

Q9: What is the tax treatment of a sale of service or lease of properties (machineries and equipment) by Freeport Zone-registered enterprises to a customer or lessee from the Customs Territory?

A9: *The sale of service shall be **exempt from VAT** if the service is performed or rendered within the Freeport Zone.*

The lease of properties, on the other hand, shall likewise be exempt from VAT if the property is located within the Freeport Zone. However, if the properties (machineries and equipment) leased by the Freeport Zone-registered enterprise is located outside of the Freeport Zone, payments to such enterprise will be considered as royalties and subject to the final withholding VAT of 12%.

xxx *xxx* *xxx"*

Based on the above-mentioned provisions, once the goods are withdrawn from the territory of the FAB and brought into the customs territory, they cease to enjoy the tax privileges accorded to FAB registered entities. It shall then be considered as an importation subject to all applicable national internal revenue taxes. However, with respect to sale of services, even if the customer is from the customs territory but the service is performed or rendered within the FAB, the transaction is exempt from VAT. Also, in case of lease of properties, as long as the property leased by FAB-registered enterprise to a lessee from customs territory is located within the Freeport Zone, it shall likewise be exempt from VAT.

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Goods from FAB in Transit to Customs Territory for Outright Exportation

Finally, PETRON contends that in instances wherein goods are withdrawn from the FAB and are admitted to the customs territory for outright exportation to another foreign jurisdiction, the same shall not be subject to payment of taxes pursuant to Section 61 of the Implementing Rules and Regulations of RA No. 9728, as amended which states that:

> *"SECTION 61. Transit of Articles by Carriers. — Carriers that undertake to transship articles from the FAB to designated freeport areas, special economic zones, export processing zones and bonded warehouses within the Customs Territory shall be bonded in an amount to be determined by the AFAB which in no case shall be less than FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, conditioned that the carrier shall transport and deliver the articles, without delay, and in accordance with applicable rules and regulations, to the Collector of Customs at the port of destination or export. The provisions of the Tariff and Customs Code, as amended, and its implementing regulations, in respect of transshipment of articles from the ports in the Customs Territory to the FAB shall govern cases of transshipment."*

As earlier discussed, for so long as the goods are exported outright to a foreign country or to other freeport zone deemed as foreign territory such as designated freeport areas, special economic zones, export processing zones and bonded warehouses within the customs territory, the same shall not be subject to VAT. In the same manner, goods withdrawn from the FAB and transported in transit to another Port of Entry for outright exportation to another foreign territory shall not be subject to the payment of taxes, provided that it fully complies with the conditions as well as with the necessary security imposed by the Bureau of Customs, the FAB and the BIR on goods transported for outright exportation. This tax-free transit of goods within customs territory is governed by RA No. 1066, existing rules and regulations of the Bureau of Customs such as the Customs Administrative Order (CAO) No. 15-2019 as properly cited by PETRON, the fuel marking guidelines and other applicable revenue issuances by the BIR imposing, among others, a permit for the shipment, posting of surety bond and proof of exportation. Non-compliance with the aforesaid conditions shall subject the goods withdrawn from FAB to the payment of applicable taxes and duties, including penalties, surcharges and interests.

This ruling is being issued on the basis of the facts and documents as represented and submitted. However, if upon investigation, the BIR ascertains that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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