

**[FIRB DOF-DBM JOINT CIRCULAR NO. 7-2012,
October 17, 2012]**

**RULES, GUIDELINES AND PROCEDURES IN IMPLEMENTING THE
TAX EXPENDITURE SUBSIDY SECTION UNDER THE GENERAL
PROVISIONS OF THE ANNUAL GENERAL APPROPRIATIONS ACT**

1. PURPOSE

This Circular is issued to prescribe the rules, guidelines and procedures relative to the implementation of the tax expenditure subsidy Section under the General Provisions of the annual General Appropriations Act (GAA), specifically Section 13 of Republic Act No. 10155 or the 2012 GAA, quoted as follows:

"SEC. 13. National Internal Revenue Taxes and Import Duties. The following are deemed automatically appropriated:

- (a) National internal revenue taxes and import duties payable by national government agencies to the National Government arising from foreign donations, grants and loans;
- (b) Non-cash tax transactions of the following national government agencies: (i) the BTr for documentary stamp taxes on foreign and domestic securities issued; (ii) the DND and PNP on importations of military hardwares, software, munitions, arms and equipment; (iii) the Bureau of Fire Protection on importations of fire fighting equipment, rescue equipment, and personal protective gears; (iv) the DOTC for the Metro Rail Transit Line 3 System incurred starting FY 1997 in accordance with the provisions of the Build-Lease- Transfer Agreement executed thereon; and (v) other tax obligations assumed by the National Government pursuant to a valid Build-Operate and Transfer agreement and any of its variants; and
- (c) Tax expenditure subsidies granted by the Fiscal Incentives Review Board to GOCCs, the AFP Commissary and Exchange Service, the PNP Service Store System, and the Procurement Service Exchange Marts, in accordance with E.O. No. 93, s. 1986, as amended, including those for tax obligations assumed by GOCCs pursuant to a valid agreement.

The amounts pertaining to such taxes and duties covered by this section shall be considered as revenue and expenditure of the government. Implementation of this section shall be in accordance with guidelines jointly issued by the DOF and DBM."

2. DEFINITION OF TERMS

For purposes of this Circular, the following terms used herein shall be construed to mean as follows:

2.1 NATIONAL GOVERNMENT AGENCIES (NGAs) - shall refer to the Judiciary, the Senate and the House of Representatives, Constitutional Commissions, departments, bureaus, offices, other commissions and all other agencies of the national government, including state universities and colleges, schools, hospitals (except specialty hospitals as defined in Section 2.2) and sanitararia.

2.2 GOVERNMENT -OWNED AND/OR -CONTROLLED CORPORATIONS (GOCCs) - shall refer to any government agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That GOCCs may be further categorized by the Department of Budget and Management (DBM), the Civil Service Commission, and the Commission on Audit (COA) for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. For purposes of this Circular, the term GOCCs shall also refer to any of the following specialty hospitals: the Philippine Heart Center; the National Kidney and Transplant Institute; the Philippine Children's Medical Center; and the Lung Center of the Philippines.

2.3 NATIONAL INTERNAL REVENUE TAXES - any form of imposition under the National Internal Revenue Code (NIRC) excluding interests, surcharges and penalties.

2.4 CUSTOMS DUTIES - any levy on imported goods under the Tariff and Customs Code of the Philippines (TCCP) excluding interests, surcharges and penalties.

2.5 IMPORTATIONS - the bringing into the Philippine territory of goods or commodities in any form acquired from any foreign country by a government entity out of its appropriation or financed by a grant, donation and/or loan. It is understood that the term does not include services performed relative to the grant, donation and/or loan.

2.6 GRANTS/DONATIONS - assistance, in cash or in kind, received from foreign governments, international and local agencies or organizations, private entities or individuals, covered by grant agreements, Memorandum of Understanding, Exchange of Notes/Deed of Donation between the donor- entity and the doneegovernment unit to finance specific projects or procurement of goods without any obligation on the part of the recipient to pay.

2.7 GRANTEE - refers to the concerned GOCC/AFPCES/PNPSSS/PX MARTS that has been granted tax subsidy by the Fiscal Incentives Review Board (FIRB) pursuant to Executive Order (E.O.) No. 93, s. 1986, as amended, in accordance with the annual GAA.

2.8 LOAN - funds whether in cash or in kind received from foreign governments, international and local agencies, private entities or individuals covered by a loan agreement to finance specific projects or procurement of goods and which must be repaid with interest over a prescribed period of time.

2.9 OTHER FEES AND CHARGES - all other forms of fees and charges other than those covered by the NIRC and the TCCP.

2.10 REVENUE COLLECTING AGENCY (RCA) - shall refer to either the Bureau of Internal Revenue (BIR) or the Bureau of Customs (BOC).

2.11 CERTIFICATE OF ENTITLEMENT TO SUBSIDY (CES) - refers to a document issued by the FIRB certifying to the amount of subsidy that is granted in favor of qualified GOCCs/ AFPCES/ PNPSSS/ PX MARTS.

2.12 TAX COMPLIANCE CERTIFICATE (TCC)/TAX SUBSIDY AVAILMENT CERTIFICATE (TSAC) - refers to the document certifying to the amount of taxes and duties paid by the concerned grantees to the BIR and/or BOC.

2.13 STATEMENT OF ACCOUNT - refers to the document issued by the BIR and/or BOC certifying to the amount of customs duties and taxes due the concerned grantees.

2.14 TAX OBLIGATIONS ASSUMED BY GOCCs PURSUANT TO A VALID AGREEMENT - refer only to national internal revenue taxes and/or duties payable to the BIR and/or BOC.

3. COVERAGE

3.1 This Circular covers the application for approval and processing of tax expenditure subsidies on: (a) customs duties and taxes payable by NGAs arising from foreign donations, grants and loans; (b) documentary stamp taxes incurred on foreign and domestic securities issued by the Bureau of the Treasury (BTr); (c) customs duties and taxes payable by Department of National Defense (DND) and Philippine National Police (PNP) on importations of military hardware, software, munitions, arms and equipment (d) customs duties and taxes payable by the Bureau of Fire Protection (BFP) on the importation of fire fighting equipment, rescue equipment and personal protective gears; (e) taxes and duties payable by the Department of Transportation and Communication (DOTC) for the Metro Rail Transit Line 3 System, incurred starting FY 1997 in accordance with the provisions of the Build-Lease-Transfer Agreement executed thereon; and (f) other tax obligations assumed by the National Government pursuant to a valid Build- Operate and Transfer Agreement and any of its variants.

This Circular also covers, with respect to GOCCs, AFPCES, PNPSSS and PX MARTS, the processing of the tax expenditure subsidy after the FIRB shall have issued a CES in favor thereof.

3.2 For importations explicitly enumerated in Sections 3.1, only those which are made in pursuance of functions and programs of concerned government entities, and in the case of regulated importations, only those which are duly authorized by the Bangko Sentral ng Pilipinas, the Department of Trade and Industry and/or other government entities empowered to regulate said importations are covered by this Circular.

4. GENERAL GUIDELINES

4.1 All NGAs shall be liable for all forms of national internal revenue taxes and customs duties arising out of transactions subject to assessment by the BIR and/or

BOC, pursuant to the provisions of Department of Budget and Management - Department of Finance Joint Circular No. 3-98.

4.2 NGAs, including GOCCs that are entitled to tax expenditure subsidy, shall not be required to pay in cash or in kind their obligations for internal revenue taxes and customs duties covered by this Circular. All other National Government Agencies, including GOCCs that are not entitled to tax expenditure subsidy shall pay the amount due in cash to the RCA chargeable against their own funds. The imported goods subject to tax shall not be released unless the taxes and customs duties due thereon have been paid.

4.3 The BIR and the BOC shall include in their monthly reports of actual income, the internal revenue taxes and customs duties paid out of tax subsidy based on the Special Allotment Release Orders (SARO) issued by the DBM, pursuant to the pertinent provisions of the annual GAA. The Cash Operations Report (COR) of the BTr shall henceforth reflect the taxes and duties paid out of the SARO of the DBM under revenues with an equivalent amount recorded under disbursements.

4.4 All importations done through grants or donations shall be supported by a Deed of Donation from the donor entity to be coursed through and authenticated by the Philippine Embassy/Consulate at the donor's country, and a Deed of Acceptance from the recipient agency.

4.5 The deadline of submission of agency requests for tax subsidies shall be in accordance with the deadline set in the fund release system guidelines for a calendar year.

5. SPECIFIC PROCEDURAL GUIDELINES

5.1 Application for, Approval, and Processing of Tax Expenditure Subsidy for National Government Agencies

5.1.1 For importations of NGAs arising from foreign donations, grants and loans

5.1.1.1 At least ten (10) working days prior to the arrival of the non-commercially imported goods, the importing agency (IA) shall submit to the BOC - Collection Service the original copy of the Certification of Official Importation (Form 1). This shall be supported by the authenticated copy of the Bill of Lading (B/L) or Airway Bill (AWB), Parcel Notice, Other Shipping Documents; Packing List, Commercial Invoice, Inventory List; Memorandum of Undertaking; Statement of Account; Notarized Deed of Donation and Acceptance (in case of donations); Memorandum of Agreement (in case of loans or grants); Indorsement from the DOF, if applicable; Clearance from the Presidential Management Staff (PMS) under the Office of the President (OP) pursuant to PMO 36 [in case of donations to the Department of Social Welfare and Development (DSWD)]; Certification of the Department of Trade and Industry (DTI) that the imported articles are not locally available; Clearance from other Government Agencies that may be applicable; and other documentations that may