

REGULATIONS IMPLEMENTING SECTIONS 12(C) AND 15 OF REPUBLIC ACT NO. 7227 AND SECTIONS 24(B) AND (C) OF REPUBLIC ACT NO. 7916 ALLOCATING TWO PERCENT (2%) OF THE GROSS INCOME EARNE...

BIR REVENUE REGULATIONS NO. 12-97, August 07, 1997

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SECTION 1. Scope. — Pursuant to the provisions of Section 245 of the National Internal Revenue Code, as amended, in relation to Sections 5 (m), 13 (b) and 15 of Republic Act No. 7227 and Section 55 of Republic Act No. 7916, these Regulations are hereby promulgated to implement Sections 12 (c) and 15 of RA 7227 and Section 24 (b) and (c) of RA 7916 regarding the sharing, distribution and manner of disposition of the share of the local government units affected by the declaration of the ECOZONES from the collection of two percent (2%) of the gross income earned by the businesses and enterprises from their registered activities within the Subic, Clark, John Hay, Poro Point Special Economic and Free Port Zones and other ECOZONES under the Philippine Economic Zone Authority (PEZA).

SECTION 2. Definition of Terms. — For purposes of this Regulation, the terms as used herein shall have the following meaning:

a. "ECOZONES" or "Special Economic Zones" (SEZ) shall refer to selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are more particularly fixed or delineated by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

a.1. "Industrial Estate (IE)" shall refer to a tract of land subdivided and developed according to a comprehensive plan under a unified continuous management and with provisions for basic infrastructure and utilities, with or without pre-built standard factory buildings and community facilities for the use of a community of industries.

a.2. "Export Processing Zone (EPZ)" shall refer to a specialized industrial estate located physically and/or administratively outside the customs territory and predominantly oriented to export production. Enterprises located in export processing zones are allowed to import capital equipment and raw materials free from duties, taxes and other import restrictions.

a.3. "Free Trade Zone" shall refer to an isolated policed area adjacent to a port of entry (such as seaport and/or airport) where imported goods may be unloaded for immediate transshipment or stored, repacked, sorted, mixed, or otherwise manipulated without being subject to import duties. However, movement of these imported goods from the free-trade area to a non-free-trade area in the country shall be subject to customs and internal revenue rules and regulations.

a.4. "Tourist/recreational center" shall refer to an area within the ECOZONE where tourist accommodation facilities such as hotels, apartelles, tourists inns, pension houses, resorts, sports and/or recreational facilities are provided to render tourism services for both local and foreign tourists, travellers and investors in accordance with

the guidelines issued by the PEZA.

b. "Gross Income" shall refer to gross sales or gross revenues derived from the registered business activities within the ECOZONE, net of sales discounts, sales returns and allowances and minus costs of sales, cost of production or direct costs of services (depending on the nature of business) but before any deduction is made for administrative expenses or incidental losses during a given taxable period.

c. "LGUs affected by the Declaration of the ECOZONES" shall refer to municipalities and cities within the metes and bounds of the ECOZONES as identified by Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Poro Point Development Corporation (JHPPDC) and PEZA in coordination with the Department of Interior and Local Government (DILG) entitled to receive a certain share in the amount equivalent to 1% of the gross income earnings (GIE) paid by registered enterprises within and operating inside the secured area of the ECOZONES.

d. "LGUs Outside and Contiguous to the ECOZONES" shall refer to municipalities and cities situated outside and contiguous to the ECOZONES entitled to receive a share in the development fund based on a sharing formula provided under RA 7227 and RA 7916. The SBMA, CDC, JHPPDC and PEZA in coordination with the DILG shall identify the LGUs outside and contiguous to the ECOZONES within 30 days from the effectivity of these Regulations.

e. "Development Fund" shall refer to the amount equivalent to 1% of the gross income earnings paid by registered enterprises inside the ECOZONES to be used by and for the development of the municipalities and cities outside of and contiguous to the ECOZONES.

f. "Subic, Clark, John Hay, Poro Point ECOZONE Operating Enterprise" shall refer to any enterprise within the ECOZONE engaged in export, free trade, industrial, commercial, financial, tourism and recreational activities registered with fiscal incentives under Sections 12(b) and (c) and 15 of RA 7227.

g. "PEZA ECOZONE Operating Enterprise" shall refer to any enterprise within the ECOZONE engaged in export, free trade, domestic market, pioneer, facilities/utilities, tourism and development and operation of economic areas which are registered with fiscal incentives under Section 23 of RA 7916. It shall not include persons and service enterprises referred to under Section 25 of RA 7916.

h. "National Taxes" shall refer to all internal revenue taxes, including the regular income taxes, otherwise due and collectible from a registered ECOZONE enterprise under the National Internal Revenue Code and customs duties and import charges under the Tariff and Customs Code. National taxes shall, however, not include withholding taxes on salaries of employees or on income payments to persons other than a registered ECOZONE enterprise, subject to the withholding tax at source under Section 50(b) of the Tax Code, as amended.

i. "Local Taxes" shall refer to all local taxes, business taxes, real estate taxes, and other taxes, fees and charges imposed by Local Government Units pursuant to the Local Government Code of 1991, as amended.

SECTION 3. Sharing and Distribution of the Proceeds From the 5% Gross Income Earnings Paid by Registered Enterprises Pursuant to RA 7227 and RA 7916.

3.1. Pursuant to Section 12(c) of RA 7227 in relation to Section 3 of Presidential Proclamation No. 420 series of 1994, Section 5 of Executive Order No. 80 and Section 2, par. 2.1.2 of Executive Order No. 62, registered enterprises within the Subic, Clark, John Hay and Poro Point Special Economic Zones, shall, in lieu of paying local and national taxes, pay five percent (5%) of their gross income earnings, which shall be distributed as follows:

(a) To the National Government 3%

(b) To the Local Government Units affected by the declaration of the ECOZONE, to be distributed in the manner set forth under Sec. 5.4.1.1 herein 1%

(c) To the Special Development Fund of each concerned LGU of municipalities/ cities contiguous to the base/ecozone areas and, for the SBMA, for such LGUs located outside and contiguous to the City of Olongapo and the Municipality of Subic, to be utilized for their development, and to be distributed in the manner set forth under Sec. 5.4.1.2 herein 1%

3.2. Pursuant to Section 24 of RA 7916, PEZA-registered enterprises, except persons and service enterprises referred to under Section 25 of said Act shall, in lieu of paying national and local taxes, pay five per cent (5%) of their gross income earnings which shall be distributed as follows:

(a) To the National Government 3%

(b) To the Local Government Units affected by the declaration of the ECOZONE to be distributed in proportion to their population, land area, and equal sharing factors; and 1%

(c) To the Special Development Fund of the concerned LGU to be utilized by and for the development of municipalities outside and contiguous to each ECOZONE. Provided,

That the respective share of the affected local government unit shall be determined on the basis of the following formula: 1%

Population — 50%

Land area — 25%

Equal Sharing — 25%

Provided, however, that the PEZA-registered enterprise operating within the ECOZONE is not availing of the fiscal incentives under PD 66 or EO 226 as provided under Sections 23 and 46 of RA 7916, or if the said PEZA-registered ECOZONE operating enterprise is availing of said incentives, its net operating loss carryover or income tax holiday availment period has expired.

SECTION 4. Payment of the 5% of the Gross Income Earnings by All Registered Businesses and Enterprises within the SEZ. — The total amount representing 5% of the gross income earnings by all registered enterprises from the operation of their business activities inside Subic, Clark, John Hay and Poro Point Special Economic Zones and all other Special Economic Zones under PEZA shall be paid to any accredited bank within the Revenue District Office having jurisdiction over the respective ECOZONES on or before the 15th day of the fourth month following the close of the taxable year.

SECTION 5. Procedures, Reporting Requirements and Manner of Distribution of LGU Share.

5.1. Annually, at the end of the month of April, all Revenue District Officers shall prepare and submit a report to the BIR — Revenue Accounting Division showing the total amount collected two years back equivalent to 5% of the gross income earnings of all business enterprises registered within an ECOZONE; that is, collections should be reported on or before April 30 in time for the preparation of the proposed annual General Appropriations Act.

5.2. This report serves as the basis of the Revenue Accounting Division to issue a certification of the total LGU share from such collection. This certification must be submitted to the Department of Budget and Management (DBM) not later than May 15 as the basis for the provision of the corresponding appropriation in the subsequent year's General Appropriations Act.

5.3. The amount shown in this certification shall be reflected as a deduction from the Total Internal Revenue Tax

Base from which the 40% Internal Revenue Allotment (IRA) is derived, which is likewise submitted by the BIR to DBM and is used by the latter as the basis for recommending the amount for the subsequent years's appropriation for IRA.

5.4. In the case of collections from Subic, Clark, John Hay and Poro Point Special Economic Zone enterprises, the BIR certification shall include the manner of distribution of such shares among concerned LGUs.

5.4.1. The criteria for the distribution of 1% due the local government units affected by the declaration of the ECOZONE shall be as follows:

5.4.1.1. The one percent (1%) share of the LGUs affected by the declaration of the Subic, Clark, John Hay and Poro Point Special Economic Zones pursuant to Section 12(c) of RA 7227 shall be distributed on the basis of the following formula:

- a) Population — 50%
- b) Land Area — 25%
- c) Equal Sharing — 25%

5.4.1.2. For uniformity purposes, the BIR shall allocate the LGUs' shares using the same formula/proportion used by DBM in the allocation of the IRA which is 50% based on population, 25% based on land area and 25% equal sharing. Likewise, the population data should be based on the latest census provided by the National Statistics Office and the land area to be based on the latest Masterlist of Land Area issued by the Land Management Bureau of the Department of Environment and Natural Resources.

5.4.2. The criteria for the distribution of the 1% Development Fund to LGUs concerned shall be as follows:

The 1% Development Fund shall be distributed by the appropriate government agency to municipalities/ cities outside and contiguous to the base areas in proportion to their population, land area and equal sharing factors, as in subparagraph 5.4.1.1. above, Provided, That the projects to be funded from the development fund shall be endorsed by SBMA, CDC, or JHPPDC as the case may be, as to the appropriateness and soundness of the uses of the fund.

5.5. In the case of Special Economic Zones established under PEZA, the one percent(1%) share of the LGUs affected by the declaration of the ECOZONES, including the 1% Development Fund to be used for the development of municipalities outside and contiguous to these ECOZONES pursuant to Section 24 (b) and (c) of RA 7916 shall be distributed by the appropriate government agency, Provided, That the projects to be funded from the development fund shall be endorsed by PEZA as to the appropriateness and soundness of the uses of the fund.

SECTION 6. Other Reporting Requirements. — The LGU-beneficiaries of the Development Fund are required to submit reports to SBMA, CDC, JHPPDC or PEZA, as the case may be, and to DBM on a quarterly basis which shall specify the status of the project, extent of the utilization of the fund and other related information as may be required.

SECTION 7. Effectivity. — These Regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Adopted: 07 Aug. 1997

ROBERTO F. DE OCAMPO
Secretary of Finance

Recommending Approval:

LIWAYWAY VINZONS-CHATO
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