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PRESCRIBED THE GUIDELINES FOR AVAILMENT OF THE TAX INCENTIVES GRANTED BY REPUBLIC ACT NO. 7471, OTHERWISE KNOWN AS THE PHILIPPINE OVERSEAS SHIPPING DEVELOPMENT ACT

KRI REVENUE REGULATION NO. 15-93, September 01, 1993

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SECTION 1. Scope - Pursuant to Section 245 of the National Internal Revenue Code (NIRC) and Republic Act No. 7471, these regulations are hereby promulgated prescribing the guidelines for availing of the internal revenue tax incentives granted by this Act.

SECTION 2. Definitions - As used in the Act and in these regulations:

a. Philippine overseas shipping means the transport of goods or services by Philippine registered vessel beneficially/disponently owned and operated by a Philippine shipping enterprise, except when the vessel is operated solely between ports in the Philippines.

b. Philippine shipping enterprise means a citizen of the Philippines or an association or organization under the laws of the Philippines, at least sixty per cent of the capital of which is owned by citizens of the Philippines, and with this enterprise exclusively engaged in Philippine overseas shipping. For this purpose of determining the ownership requirement, this shall be determined as of the end of each year of operations.

c. Philippine registered vessel means a vessel registered in accordance with Philippine laws and regulations, including that of MARINA Memorandum Circular No. 33-A or 51.

SECTION 3. Coverage of national internal revenue tax incentives - a) A qualified Philippine shipping enterprise shall be entitled to the following national internal revenue tax incentives:

- Exemption from the payment of value added tax on importations of vessels for registration under the Philippine flag, and spare parts for the repair and/or overhaul of vessels, provided that these spare parts are destined to a Philippine dry-docking or repair facility accredited by MARINA and registered as a customs-bonded warehouse, or to the vessel in which these parts are to be installed.

- Exemption from the payment of income tax on income derived directly from Philippine overseas shipping up to May 5, 2002.

b. Furthermore, local manufacturers or dealers who sell machinery, equipment, materials and spare parts to a Philippine shipping enterprise shall be entitled to a tax credit, hereinafter called suppliers' tax credit, for the full amount of the value added tax that had been actually paid thereon.

SECTION 4. Requirements for exemption from payment of value added tax on importations of vessels and spare parts - MARINA shall refer to the Bureau of Customs and copy furnished the Bureau of Internal Revenue applications of taxpayer-importers for exemption from payment of value added tax according to existing rules and procedures.

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SECTION 5. Requirements for the grant of the suppliers' tax credit - MARINA shall refer to the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center created under Administrative Order No. 266 the applications for the issuance of the suppliers tax credit in the form of a tax credit certificate to the manufacturers or dealers of the Philippine shipping enterprise according to existing rules and procedures. This tax credit shall be the amount of value added tax or input tax on the purchase or importation of goods for sale or for conversion into the finished products enumerated in paragraph (b) of Section 3 of these regulations and sold to the Philippine shipping enterprise. The available input tax for the manufacturer or dealer shall be reduced by the amount of application for the issuance of tax credit certificate in accordance with Section 11 of Revenue Regulations No. 5-87.

SECTION 6. Requirements for exemption from income tax (a) Conditions for exemption. - A Philippine shipping enterprise shall be exempt from the payment of income tax on income derived directly from Philippine overseas shipping up to May 5, 2002, provided that:

- The entire net income, after deducting not more than ten percent (10%) thereof for distribution of profits or declaration of dividends, which would otherwise be taxable under the provisions of Title II of the National Internal Revenue Code, is actually reinvested in accordance with these regulations not later than May 5, 2005 for:

i. the construction, purchase or acquisition of vessels and related equipment; and/or

ii. the improvement or modernization of its vessels and related equipment.

- The cumulative amount so reinvested shall not be distributed as profits or dividends until after May 5, 2012, or until the vessel or related equipment so acquired have been fully paid, whichever date comes earlier.

b. Coverage of income which is exempt from income tax The income derived from Philippine overseas shipping entitled to exemption from the payment of income tax hereunder, is limited to income from the transport of goods and/or passengers overseas. It does not include income not directly related to transport of goods and passengers overseas, such as, but not limited to, interest income, gain from sale of vessels, or charter fee/lease income.

c. Effect of failure to reinvest or withdrawal before the prescribed date Any amount not so reinvested, or withdrawn prior to the expiration of the period stipulated in paragraphs (a)(1) and (a)(2) of this section, respectively, shall be subject to the payment of the corresponding income tax due thereon, including penalties, surcharges and interests as provided for in the National Internal Revenue Code. If by May 5, 2012, or, in the event of dissolution of the Philippine shipping enterprise before the aforementioned date, there is still a remaining balance in the appropriated (for reinvestment in overseas shipping) retained earnings account as determined in paragraph (d) of this section, such shall be considered as the amount not so reinvested, which shall be subject to the payment of the corresponding income tax, including penalties, surcharge and interest pursuant to the National Internal Revenue Code. This amount not so reinvested shall be considered as originating from the most recent net income(s) and shall be the basis for determining the amount of deficiency income tax, penalties, surcharge and interest to pay. For this purpose, the running of the statue of limitations is hereby waived, and the particular taxpayer shall execute a waiver to this effect before being allowed to avail of this income tax exemption.

d. Accounting procedures Separate sets of accounting books and records shall be maintained in order that the tax exempt income and its related deductions or expenses can be segregated from the any taxable income and related expenses of the Philippine shipping enterprise. For purpose of this section, the accounting of the reinvestment and retention of the net income, after deducting not more than 10% thereof for the distribution of profits or declaration of dividends, shall be done through the recording and adjustments of the appropriated (for reinvestment in overseas shipping) retained earnings account, which shall be considered as the restricted portion of the retained earnings in the balance sheet. This account shall be increased by the amount of net income earned and exempted

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from income tax each year. On the other hand this account shall be reduced by any construction, purchase, acquisition of vessels and/or improvement or modernization of its vessels and related equipment, which are deemed as reinvestments, once these are fully paid or on May 5, 2012, whichever comes earlier. The amount of these reinvestments not fully paid as of the end of each tax year and the amount and nature of reinvestments made in a particular year shall be reported in the notes accompanying the financial statements and recorded in the books to be maintained for this purpose.

e. Tax compliance requirements The Philippine shipping enterprise shall continue to file the prescribed income tax return(s) showing the tax exempt income and taxable income, if any, and corresponding deductions. The Philippine shipping enterprise shall also annually file with MARINA an application for income tax exemption, which shall then be forwarded to the Bureau of Internal Revenue not later than the April 15 of each year, for the issuance of the "Certificate of Income Tax Exemption", if warranted. Any income item which has been exempted from income tax pursuant to this Act cannot be subsequently deducted as bad debt or any similar deduction, against any taxable income earned after May 5, 2002.

SECTION 7. Effectivity — These regulations shall take effect fifteen (15) days after publication in the Official Gazette or newspaper of general circulation whichever comes first.

Adopted: 1 Sept. 1993

(Sgd.) ERNEST LEUNG
Acting Secretary of Finance

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