

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

June 3, 2003

REVENUE MEMORANDUM CIRCULAR NO. 31-2003

SUBJECT : Uniform Guidelines on the Taxation of Imported Motor Vehicles through the Subic Free Port Zone and Other Freeport Zones That are Sold at Public Auction

TO : All Internal Revenue Officials and Others Concerned

- I. Background** – It has been an open practice that motor vehicles such as passenger cars, light commercial vehicles, trucks and other heavy equipments enter the Philippines through the Subic Special Economic and Freeport Zone (SSEFZ), as well as through the other legislated freeport zones, for the purpose of selling them at public auction. These vehicles are brought in as brand new or second-hand units, either as left-hand drive or right-hand drive vehicles, and most of which are being sold in lots at public auctions. While the auctioned imported vehicles are usually consigned to the auctioneer, there are also instances when said importations are made by individual persons who avail the services of the auctioneer by including their individual units of vehicles to the lots being auctioned. In turn, the individual unit consignees pay the auctioneers a certain amount as commission for the services rendered. Currently, there are three (3) registered auctioneers in SSEFZ, namely: Subic Bay Motors Corporation, United Auctioneers and Asia International, while three (3) others are operating in Valenzuela, Bulacan, namely: Auction Line, Auction in Malinta and United Auctioneers.

Up to the middle of 1999, the price actually fetched at auction was taken as the dutiable value of the goods. The winning bidders themselves pay the duties and taxes before the release of the goods from the zone. In response to alleged complaints by winning bidders about delays resulting from the refusal of some Customs officials to automatically accept the bid price as the basis for the computation of the duty and tax payable, as well as alleged ‘foot dragging’ the release process, certain changes were instituted.

The duty and taxes payable are now determined before the conduct of the auction. The auction firms present the invoice issued by the supplier of the goods from abroad which reflects the price that (unless disputed) is taken as the transaction value. The auctioneer himself pays the duties and taxes before the conduct of the sale

so there is no more customs intervention after the sale of the goods. Moreover, these imported articles are being released from the customs' custody without the prescribed Authority to Release Imported Goods (ATRIG) issued by this Bureau.

These motor vehicles, in turn, are being registered with the Land Transportation Office (LTO) in the names of the auctioneers before the conduct of the public auction. These schemes in the payment of taxes and effecting registration with the LTO in the names of the auctioneers were adopted to facilitate the release of the vehicles from the Bureau of Customs (BOC) and the transfer of registration of the same to the winning bidder.

It has been observed that while this practice is already going on for a considerable length of time, this Bureau has not obtained sufficient information to effectively monitor the activities of the auctioneers, zone-locators, traders and auction-consultants and to ensure that the correct internal revenue taxes are being collected from them. It may have been the result of the confusion on what should be the proper tax treatment on the different transactions involved in such public auctions. In view thereof, this Circular is issued to clarify the tax treatments, as well as the proper procedures to be observed, on the transactions involved in such public auctions of these imported motor vehicles and heavy transportation/construction equipments.

II. Tax treatments on the transactions involved in the importation of motor vehicles through the SSEFZ and other legislated freeport zones and subsequent sale thereof through public auction. – Pursuant to existing revenue issuances, the following are the uniform tax treatments that are to be adopted on the different transactions involved in the importation of motor vehicles through the SSEFZ and other legislated freeport zones that are subsequently sold through public auction:

A. Importation of motor vehicles into the freeport zones

1. Motor vehicles that are imported into the freeport zones for exclusive use within the zones are, as a general rule, exempt from customs duties, taxes and other charges, provided that the importer-consignee is a registered enterprise within such freeport zone. However, should these motor vehicles be brought out into the customs territory without returning to the freeport zones, the customs duties, taxes and other charges shall be paid to the BOC before release thereof from its custody.
2. In case of tourist buses and cars, service vehicles of registered freeport enterprises and company service cars are used for more than an aggregate period of fourteen (14) days per month outside of the freeport zones, the owner or importer shall pay the corresponding customs duties, taxes and charges.

3. For imported motor vehicles that are imported by persons that are not duly registered enterprises of the freeport zones, or that the same are intended for public auction within the freeport zones, the importer-consignee/auctioneer shall pay the value-added tax (VAT) and excise tax to the BOC before the registration thereof under its name with the LTO and/or the conduct of the public auction.
4. For purposes of computing the value-added tax (VAT) and excise tax, if applicable, the basis thereof is the transaction value used by BOC in determining the tariff and customs duties and shall be paid before the motor vehicles are released from the customs custody.

B. Subsequent sale/public auction of the motor vehicles

1. Scenario One – The public auction is conducted by the consignee of the imported motor vehicles within the freeport zone

- 1.1 The gross income earned by the consignee-auctioneer from the public auction of the imported motor vehicles shall be subject to the preferential tax rate of five percent (5%) in lieu of the internal revenue taxes imposed by the National Internal Revenue Code of 1997, provided that the following conditions are present:
 - a. That, the consignee-auctioneer is a duly registered enterprise entitled to such preferential tax rate as well as a registered taxpayer with the Bureau of Internal Revenue (BIR).
 - b. That, the total income generated by the consignee-auctioneer from sources within the customs territory does not exceed thirty percent (30%) of the total income derived from all sources.
- 1.2. In case the consignee-auctioneer is a registered enterprise and/or locator not entitled to the preferential tax treatment or if the same is entitled from such incentive but its total income from the customs territory exceeds 30% of its entire income derived from the customs territory and the freeport zone, the income derived from the public auction shall be subjected to the regular internal revenue taxes imposed by the Tax Code.
- 1.3. In case the motor vehicles were imported by certain persons, whether natural or juridical, who are not registered auctioneers and the services of the registered auctioneer were availed of for purposes of including such imported motor vehicles in the public auction, the following rules shall be observed:
 - a. The income derived from the auction sale by such persons shall be treated as an ordinary income subject to the regular income taxation.

- b. For natural persons, in the event they have engaged in the said transaction for five (5) or more times in given taxable period, such persons shall be considered as habitually engaged in trade and business. Accordingly, they shall be required to be registered to the BIR and pay the appropriate taxes including the obligation to withhold the creditable expanded withholding tax on the amount paid, as commission income, for the services rendered by the registered auctioneer.
- 1.4. In the event that the winning bidder shall bring the motor vehicles into the customs territory, the winning bidder shall be deemed the importer thereof and shall be liable to pay the VAT and excise tax, if applicable, based on the winning bid price. However, in cases where the consignee-auctioneer has already paid the VAT and excise tax on the motor vehicles before the registration thereof with LTO and the conduct of public auction, the additional VAT and excise tax shall be paid by winning bidder resulting from the difference between the winning bid price and the value used by the consignee-auctioneer in payment of such taxes. For excise tax purposes, in case the winning bid price is lower than the total costs to import, reconditioning/rehabilitation of the motor vehicles, and other administrative and selling expenses, the basis for the computation of the excise tax shall be the total costs plus ten percent (10%) thereof. The additional VAT and excise taxes shall be paid to the BIR before the auctioned motor vehicles are registered with the LTO.
 - 1.5. In case the services of a professional auctioneer is employed for the public auction, the final withholding tax of 25%, in case he/she is a non-resident alien, or the expanded withholding tax of 20%, in case he/she is a resident citizen or alien, shall be withheld by the consignee-auctioneer from the amount of consideration to be paid to the professional auctioneer and shall be remitted accordingly to the BIR.

2. Scenario Two –The public auction is conducted outside the freeport zone

The transactions in the public auction are likewise subject to the internal revenue taxes imposed by the Tax Code, detailed as follows:

- 2.1. For income tax purposes, the regular income tax rates imposed under Section 24 (A), and Section 27 of the Tax Code on the net income, for individuals and corporate taxpayers, respectively, shall apply.
- 2.2. The additional VAT and excise tax resulting from the difference between the winning bid price and the value that may have been used in payment of such taxes to the BOC shall be paid by the consignee-auctioneer to the BIR

where it is registered before the auctioned motor vehicles are registered with the LTO under its name. In case the winning bid price is lower than the total costs to import, reconditioning/rehabilitation of the motor vehicles, and other administrative and selling expenses, the basis for the computation of the excise tax shall be the total costs plus ten percent (10%) thereof.

- 2.3. If the consignee-auctioneer is not a BIR-registered taxpayer, the gross sales derived from such auction shall be subjected to VAT and the same shall be remitted to the BIR where the consignee-auctioneer is required to be registered without the benefit of tax credit for the amount of VAT that had been paid to the BOC. However, if the consignee-auctioneer is a registered VAT taxpayer, the gross sales derived from such auction shall be subjected to the 10% VAT and shall be paid to the BIR where the consignee-auctioneer is required to be registered, net of the amount of VAT that had been paid to BOC.
- 2.4. If the consignee-auctioneer is a registered non-VAT taxpayer, the gross sales derived from such auction shall be subjected to the percentage tax rate of 3% and shall be paid to the BIR where the consignee-auctioneer is required to be registered. The amount of VAT that has been paid to the BOC shall form part of the cost of the imported vehicles and deductible only for income tax purposes. However, in case the total gross sales amounted to P550,000.00 at any given time during the taxable period, the consignee-auctioneer, within 30 days following the end of the month when the P550,000 threshold was reached, shall change its registration from Non-VAT to VAT and thereafter, be required to file the VAT return and pay the 10% VAT on the gross sales derived from the subsequent auction sales.
- 2.5. The tax treatment indicated in Scenario 1 hereof shall be similarly applied even if the consignee-auctioneer engages the services of a professional auctioneer.
- 2.6. The same tax treatment in Scenario 1 hereof shall be applied in case certain persons who are not registered auctioneers have imported the motor vehicles that are subsequently publicly auctioned through the services of a registered auctioneer.

III. Authority to Release Imported Goods (ATRIG) requirement. – For motor vehicles defined as automobiles under the existing revenue regulations, an Authority to Release Imported Goods (ATRIG) shall be secured from the LT Assistance Division of the Large Taxpayers Service, National Office, before the value-added/excise taxes, if any, is paid and the automobile is released from the Bureau of Customs, pursuant to the Joint Memorandum Circular No. 1-2002 between the BIR and the BOC and Revenue Memorandum Order No. 35-2002 dated October 28, 2002.

All revenue officials and employees and others concerned are enjoined to give this Circular as wide a publicity as possible.

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue