Primer on the Grant of Tax Subsidy by the Fiscal Incentives Review Board (FIRB)*

Q.1. What is a tax subsidy?

A.1. Tax subsidy is a form of fiscal privilege under which taxes and duties due from a government entity are assumed by the government through budgetary appropriation, pursuant to the provision of the General Appropriations Act (GAA), enacted on an annual basis by the Congress and administered by the Department of Budget and Management (DBM).

Q.2. What entities are eligible to avail of tax subsidy?

A.2. As a rule, entities eligible for tax subsidy are government entities which may be a national government agency (NGA), a government-owned and/or -controlled corporation (GOCC), government commissary, state university and college (SUC) and other government instrumentality (GI) as may be provided under the GAA. Private entities are not eligible for tax subsidy in view of the Constitutional prohibition on the use of public funds for private undertakings.

Q.3. What are GOCCs?

A.3 GOCCs 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 percent of its capital stock: Provided, That GOCCs may be further categorized by the DBM, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. 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.

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Q.4. Where can an NGA/GOCC/government commissary/SUC/other GI apply for tax subsidy?

A.4. Applications for tax subsidy of the agencies above-mentioned are coursed through the Fiscal Incentives Review Board (FIRB).

Q.5. What is the FIRB?

A.5. The FIRB is an inter-agency committee created under Presidential Decree (PD) 776 (issued on August 24, 1975), tasked to determine what subsidies and tax exemptions should be modified, withdrawn, revoked or suspended. The FIRB currently processes and approves the grant of tax subsidy to GOCCs, government commissaries, SUCs and other GIs.

Q.6. What is the purpose of granting tax subsidy?

A.6. The grant of tax subsidy is intended to enable government entities to have enough financial flexibility by relieving them of the burden of taxes and duties so that they can concentrate their resources on other activities that will achieve their socio-development objectives. It is also made to augment the operational needs of certain government entities whose operations have significant contribution to economic growth and development.

Q.7. Why is the grant of tax subsidy preferred over outright tax and duty exemptions?

A.7. The grant of tax subsidy is preferred over outright tax and duty exemptions for reasons of fiscal transparency because they can be evaluated and monitored to enable the government to determine their fiscal and related repercussions. In contrast, outright tax and duty exemptions are not as transparent as tax subsidies due to monitoring problems.

Q.8. What are the taxes usually covered by tax subsidy provisions as approved by the FIRB?

A.8. The taxes which are the subject of application for tax subsidy of an NGA/GOCC/government commissary/SUC/other GI generally cover value-added tax (VAT), excise taxes, duties and taxes on importations of equipment, materials, spare parts, and supplies. As a matter of policy, the FIRB has adopted not to grant tax subsidy on the direct income tax liabilities of concerned GOCCs and commissaries, unless otherwise approved by the FIRB (FIRB Resolution 22-10 dated December 10, 2010). This is based on the premise that since the entity is earning income, it is presumed that it has the ability to pay its income tax liability.

Q.9. What are the implications of the passage of RA 10963 (Tax Reform for Acceleration and Inclusion [TRAIN] law on the FIRB process?

A.9. Section 86 of RA 10963 provides for the repeal of the VAT exemption provision under various laws and subjects the affected persons and/or transactions to the VAT under Title IV of the NIRC of 1997, as amended, to broaden the VAT base. It repealed the provision of VAT exemption under 56 laws. In the case, however, of certain government agencies, i.e., GOCCs, SUCs, and other GIs, their VAT obligations shall be chargeable to the Tax Expenditure Fund (TEF) provided for under the annual GAA. In other words, their VAT exemption was replaced by a targeted tax subsidy being administered by the FIRB.

Q.10. What is the composition of Board Proper?

A.10. The Board Proper is composed of the following member-agencies: (1) Department of Finance (DOF), with its Secretary as the Chairperson (or its official representative acting as the Presiding Officer); (2) Department of Trade and Industry (DTI); (3) Department of Budget and Management (DBM); (4) National Economic and Development Authority (NEDA); (5) Bureau of Internal Revenue (BIR); (6) Bureau of Customs (BOC); and (7) National Tax Research Center (NTRC).

Q.11. Who are the members of the FIRB Technical Committee?

A.11. The FIRB Technical Committee is composed of the representatives of the above-mentioned member-agencies.

Q.12. What is the function of the Board Proper?

A.12. The Board Proper is the principal decision-making authority therein.

Q.13. What are the functions of the FIRB Technical Committee?

A.13. The FIRB Technical Committee evaluates and makes recommendations on requests for fiscal privileges of government entities for the consideration of the Board Proper.

Q.14. What are the functions of the FIRB Secretariat?

A.14. The FIRB Secretariat prepares the studies corresponding to all requests for tax subsidy pursuant to EO 93 and acts as a custodian of all FIRB records and documents. Currently, the NTRC serves as the FIRB Secretariat, with the NTRC Executive Director as Head thereof.

Q.15. What are the FIRB review processes?

A.15. Tax subsidy applications of GOCCs and government commissaries filed with the FIRB undergo a three-tiered review process: (1) Secretariat level; (2) Technical Committee level; and (3) Board Proper level.

Q.16. What are the criteria that the FIRB use in its review approach?

A.16. To conform with the prevailing policy thrusts, the FIRB uses the following criteria in its review approach:

1. Effect of subsidy on relative price levels;
2. Relative contribution of the applicant to the revenue generation effort;
3. Nature of the activity engaged in by the applicant;
4. Greater national interest to be served;
5. Magnitude and source of funding for the system of subsidies;
6. Number of eligible applicants and their proportionate share in the system of subsidies;
7. Terms and conditions for the availment of subsidies, including reporting requirements;
8. Effect of the system of subsidies on international agreements in which the Philippines is a party/signatory, making sure that availment of subsidies does not become the basis for countervailing action; and
9. Such other considerations as may be determined by the FIRB.

Q.17. What are the documentary requirements for tax subsidy applications?

A.17. Requests for tax subsidy shall be initiated by the concerned GOCC- or commissary-applicant, with the Head of Office or any of its authorized official submitting a letter-request to the FIRB Secretariat together with the following documents/information requirements:

1. Endorsement from the Department/Office to which the applicant is attached;
2. Backgrounder of the applicant;
3. Details of tax subsidy requirement;
4. Income Tax Return;
5. Detailed list of importations/purchases;
6. Justifications for the application;
7. Latest annual/performance report;

8. Certification stating that items for which tax subsidy is sought shall be used exclusively in the pursuit of mandated functions;
9. Statement under oath of investments and income therefrom;
10. Financial opinion/endorsement of the Corporate Affairs Group (CAG) of the DOF for CAG-monitored GOCCs;
11. Such other documents as may be required by the FIRB.

Q.18. How much time is involved in the processing of tax subsidy applications?

A.18. The evaluation of the application for tax subsidy shall be made within five (5) working days and six (6) hours from the receipt by the FIRB Secretariat of the complete documentary requirements. The draft evaluation paper shall be reviewed by the NTRC Directors within one (1) working day and two (2) hours before being elevated either to the FIRB Technical Committee for its initial evaluation and recommendation, and subsequently to the Board Proper for its final decision or directly to the Board Proper for referendum purposes.

Q.19. How are tax subsidy applications approved?

A.19. The decision on the approval or denial of the application for tax subsidy rests solely on the FIRB. The decision can be reached by any of the following processes:

(a) Regular Process

- The evaluation paper prepared by the FIRB Secretariat shall be elevated to the FIRB Technical Committee for its evaluation and recommendation within seven working days and two hours from the scheduled FIRB Technical Committee meeting. The request shall then be elevated to the Board Proper for its own evaluation and decision; or

(b) Joint FIRB-Technical Committee Meeting

- The FIRB may call for a joint FIRB-Technical Committee meeting where the members of both the FIRB and its Technical Committee deliberate and decide on the applications for tax subsidy after the initial evaluation at the Secretariat level. For practical consideration, meetings are scheduled when a number of GOCCs and/or commissaries have already submitted their applications with corresponding studies thereon prepared by the FIRB Secretariat; or

(c) Via Referendum

- Application for tax subsidy is acted upon via a referendum where the FIRB Resolution and the evaluation paper are passed around to the Presiding Officer and members of the FIRB for their comments and/or approval. Action is confirmed by affixing their signatures on the Resolution.

Due to time constraints in undergoing a regular process or setting-up a Joint FIRB-Technical Committee Meeting, or when an application requires the immediate action of the FIRB, a decision of the Board Proper with regard to a request or application for tax subsidy can be promulgated expeditiously or within a shorter period of time via a referendum. Only when a majority of the members of the Board Proper conforms with the grant of tax subsidy and have affixed their signatures in the Resolution that a favorable decision is deemed officially reached. In the event that a member of the Board Proper does not concur to the grant of tax subsidy or has any comment/s or reservation/s on the particular application, such member can write a marginal note in the Resolution next to his/her name affirming dissent as well as any comment/s or observation/s with signature to indicate his/her official decision. The member of the Board Proper may also convey any comment/s, remark/s or observation/s to the Secretariat.

Q.20. What are the documents issued to reflect the Board action on tax subsidy application?

A.20. If the application is approved, the applicant, now the grantee, receives an FIRB Resolution and Certificate of Entitlement to Subsidy (CES). The FIRB Resolution reflects the decision on the application for tax subsidy and will be provided to the applicant. The CES will then be prepared to reflect the actual utilization based on BIR/BOC (Revenue Collecting Agency [RCA]) billings/assessments/tax returns. The CES is a pre-numbered accountable form issued on quadruplicate copies each having a different color serving as the security and control measure. White (original) [copy for the applicant], green (duplicate) [copy for the RCA], yellow (triplicate) [copy for the FIRB], and blue (quadruplicate) [copy for the DBM].

The CES issued by the FIRB shall be valid and effective until December 15, or as may be otherwise stated in a Circular Letter issued by the DBM, of the current year. However, in some special cases as warranted, the validity may be extended to December 31 of the current year.

If the application is not approved, the applicant will be notified in writing by the FIRB and furnished with the corresponding FIRB Resolution.

Q.21. What is the next process after the issuance of the FIRB Resolution and CES?

A.21. After the CES is issued by the FIRB, and copies thereof have been distributed, the RCA collection unit, on the basis of the CES, shall prepare within five working (5) days the Tax Subsidy Availment Certificate (TSAC) or Statement of Accounts for customs duties and taxes payable.

Within ten (10) working days after the end of each quarter, the grantee shall prepare the Quarterly Report of Taxes and Duties Availment (QRTDA).

Upon completion of the QRTDA, the grantee shall submit to the DBM within fifteen (15) days prior to the lapse of the effectivity date of the CES, the request for the issuance of Special Allotment Release Order (SARO), supported by the original and triplicate copies of the QRTDA, original copy of the CES and the compilation of original copies of Payment Compliance Certificates, Tax Subsidy Availment Certificate, Statement of Accounts, Assessment Notices issued by the BOC and/or BIR.

The SARO, which the DBM, will issue shall serve as the basis for recording both the obligation and liquidation of the tax expenditure. The amount of the SARO shall correspond to the verified amount indicated in the QRTDA. The DBM shall accomplish the appropriate portion of the QRTDA indicating the SARO number and date thereof. The importing agency (IA)/grantee, upon receipt of the SARO, shall forward a copy of the same to the BOC or BIR.

The IA/grantee, based on the DBM SARO, shall prepare the Journal Voucher (JV) to liquidate the obligation within ten (10) working days, copy furnished the Bureau of the Treasury-National Cash Accounting Division (BTr-NCAD).

Within ten (10) working days upon receipt of a copy of the IA/grantee JV, the BTr-NCAD shall issue a JV debiting the account of the IA/grantee and crediting the account of the RCA.

Upon receipt of the NCAD JV, the RCA Chief Accountant shall record the income in the RCA's books.

Q.22. What is CITIRA – FIRB bill?

A.22. The CITIRA bill entitled, "An Act Reforming the Corporate Income Tax and Incentives System, amending certain sections of the National Internal Revenue Code (NIRC) of 1997, as amended and creating therein new Section 282 on Tax Incentives, and for other purposes," will improve the current fiscal incentives system, which treats more than two-thirds of the economy as priority industries. CITIRA aims to make the incentive system performance-based, targeted, time-bound, and transparent. Such a system will allow prioritization and provide superior incentives to specific industries, areas, and activities for the right reasons, such as the creation of quality jobs, investments in research and development, and expansion in less-developed areas and areas recovering from calamity or armed conflict, among others.

Q.23. What will be the implications of the CITIRA bill on the current functions of the FIRB?

A.23. The current functions of the FIRB will be expanded to include, among others: (1) exercise oversight functions over investment promotion agencies (IPAs) and other government agencies (OGAs); (2) approve or disapprove the grant of fiscal incentives; (3) cancel, suspend, or withdraw the enjoyment of fiscal incentives of concerned registered enterprises (REs)/registered business enterprises (RBEs) and other registered enterprises (OREs); (4) cancel, suspend, or withdraw the enjoyment of tax subsidy of concerned GOCCs, GIs, government commissaries, and SUCs; and (5) require IPAs and OGAs to submit summaries of approved investment and incentives granted, and firm- or entity-level fiscal incentives and benefits data as inputs to the FIRB's review and audit function and evaluation of performance of recipients of fiscal incentives.

Q.24. How will the CITIRA bill impact on the FIRB processes?

A.24. The CITIRA bill provides for the repeal of certain section/s of IPA and GOCC charters to mandate all of its internal revenue tax and duty obligations to be chargeable to the TEF, upon the establishment and implementation of an enhanced TEF system that grants tax subsidy within 30 days from the filing of application with the FIRB to certain government agencies in lieu of tax exemption. As such, the tax subsidy clientele of the FIRB will be expanded to include government entities/instrumentalities other than GOCCs and government commissaries insofar as tax subsidy is concerned.

In addition to the power to grant tax subsidy to government entities, the FIRB will handle the grant of fiscal incentives to certain REs/RBEs within the various IPAs.