



July 19, 2019
MOF-ES19-063

TO : General Public

FR : Minister of Finance

RE : Proposed Regulations on Import Tax Exemption

Pursuant to the authority vested in me as the Minister of Finance under §1306(b) of 40 PNC and in compliance with the rulemaking procedure for promulgation of regulations under §125 of the Administrative Procedures Act (APA), I am proposing a new set of regulations to govern the granting of import tax exemptions for contractors directly doing business with the Government of the Republic of Palau (GoP), and the public is hereby noticed and requested to provide their comments within the required period of 30 days from this simultaneous date of public notice and posting. All comments are requested to be sent by either physical delivery to the Bureau of Revenue and Taxation or through email to esadang@gmail.com.

1. Proposed Regulations: Statement of Substance

For general contractors doing business with the Government of Palau, whether it be national or state, taxes are often passed on to the standard costs of goods or services procured by the GoP. In effort to contain rising costs of goods and services required by all agencies of the national government, as well as state governments, the GoP in select major projects it requires provisioning of goods and services from private contracts can exercise through applicable statutes the right to waive import taxes for contractors doing business with it as a way to reduce rising costs. In exercising such selective authority the GoP is always mindful to not disturb the principles of equity and fairness in its tax administration and exact unnecessary tax burdens on the general tax constituency of the country. With that objective in mind, the offered regulations are meant to provide the GoP specific and limited ability to extract optimal value for its money when procuring goods and services from contractors it does business with without comprising the integrity of the nation's tax laws.

2. Supplemental Modes for Examining Proposed Regulations

In addition to the legally mandated modes and places of posting proposed regulations specified under §125(a)(1), copies of the proposed regulations can be obtained from the Ministry of Finance's website: www.palau.gov.pw/brt and hard copies can also be obtained from the Bureau of Revenue and Taxation for examination.

3. Public Hearing

A public hearing will be held at **6PM on Monday, 29 July 2019**, at the Olbiil Era Kelulau to accord the public an opportunity to present their views on the proposed regulations.

4. Adoption of Inputs to the Proposed Regulations

Per §125(a)(3)(c), all inputs from the general public will be thoroughly reviewed for adoption, and the Ministry of Finance will issue a statement of adoption, within thirty (30) days after adoption, with emphasis on the basis upon which the draft regulations were adopted, including any material reference to public comments that were adopted.

5. Deadline for Submission of Comments

Thirty (30) days from the **July 19, 2019**, date of notice and posting of the proposed regulations, exactly on **August 20 at 5:01PM**, no further comments will be accepted.

Thank you for your understanding, and we look to hearing from the public.

Sincerely,



Elbuchel Sadang
Minister of Finance

Attachment: PROPOSED IMPORT TAX REGULATIONS

MINISTRY OF FINANCE

P.O. BOX 6011, KOROR, PW 96940

REPUBLIC OF PALAU

TEL: +(680) 767-2702/488-2465 · FAX: +(680) 767-2168/488-3844 · EMAIL: mof@palaugov.org · URL: palaugov.pw

Regulations Prescribing Import Tax Exemptions Related to Government Contracts

1. Authority and Purpose. These regulations are promulgated, in accordance with 40 PNC § 1306(b) and the Administrative Procedures Act, to prescribe certain exemptions from the import tax imposed by 40 PNC § 1301.

The purpose of the exemption prescribed in these regulations is to allow the Republic, or State Governments within the Republic, to save money and achieve more beneficial terms on Government Contracts, by exempting necessary goods or equipment from taxation under Chapter 13 of Title 40 when such action is reasonably expected to directly lower the cost or improve the delivered quality of a Government Contract.

2. Severability. If any section, subsection, item, clause, or phrase contained in these regulations is found to be illegal or otherwise incorrect or inapplicable, such finding shall not affect the validity of the remaining provisions of these regulations.

3. Definitions. The following definitions shall apply to these regulations:

- 3.1. "Emergency" means a state of emergency declared pursuant to Title 34 of the Palau National Code;
- 3.2. "Government" means the National Government of the Republic of Palau, or any State Government within the Republic of Palau;
- 3.3. "Government Contract" means a commercial contract undertaken for or in partnership with any Government;
- 3.4. "Infrastructure" means any public installation or improvement for transportation, communication, disaster management, or the generation or delivery of energy or any utility;
- 3.5. "Minister" means the Minister of Finance;
- 3.6. "MPIIC" means the Minister of Public Infrastructure, Industries, and Commerce;
- 3.7. "Permissible Justification" means a justification set forth in Section 5 of these regulations or a justification specifically provided by an act of the Olbiil Era Kelulau.

4. Exemption from Import Tax. In addition to those exemptions specifically enumerated in 40 PNC § 1306(a), the Minister shall have the authority to exempt any good(s), material(s), or equipment required by or for a Government Contract from taxation under Chapter 13 of Title 40. Any such exemption shall:

- 4.1. Be made in writing, and signed by the Minister;
- 4.2. Identify the specific good(s), material(s), or equipment to be exempted;
- 4.3. Identify the expected importer of the good(s), material(s), or equipment to be exempted; and
- 4.4. Identify the Permissible Justification for the exemption; and
- 4.5. Describe the savings or other specific benefit to the Republic that is expected to result from the exemption.

5. Permissible Justifications. Exemptions for Government Contracts may be justified when:

- 5.1. The Government Contract concerns:

- 5.1.1. Critical Infrastructure, as determined in writing by MPIIC; or

- 5.1.2. A top national priority, as determined in writing by the President; or
- 5.1.3. Responding to an Emergency; and

5.2. The exemption can be reasonably expected to:


- 5.2.1. Reduce the total price of the Government Contract; or
- 5.2.2. Reduce the interest expense related to the Government Contract; or
- 5.2.3. Increase the Government's purchasing power under the Government Contract; or
- 5.2.4. Improve the quality of the final product procured through the Government Contract.

6. Notification of Exemption. The Minister shall promptly notify, and provide a copy of any exemption issued pursuant to these regulations to:

- 6.1. The President of the Republic;
- 6.2. The President of the Senate of the Olbiil Era Kelulau;
- 6.3. The Speaker of the House of Delegates of the Olbiil Era Kelulau; and
- 6.4. If the exemption is made pursuant to a Government Contract involving a State Government, the Governor's Association.

7. Effective Date. These regulations shall take effect in accordance with the Administrative Procedures Act. They may apply retroactively to projects underway within the Republic at the time of their taking effect.

Circulated by the Ministry of Finance on this 19th day of July, 2019.



The Honorable Elbuchel Sadang
Minister of Finance