



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA 1099

June 19, 2014

CUSTOMS MEMORANDUM CIRCULAR
NO. 83-2014

TO: All Deputy Commissioners
All Directors & Chiefs
All District & Port Collectors
And Others Concerned

**SUBJECT: DOF Department Order No. 044-2014/ Post Entry
Audit Guidelines under the Fiscal Intelligence Unit,
Department of Finance (DOF-FIU)**

Attached is a copy of Department Order No. 044-2014 dated June 17, 2014 duly issued by Secretary Cesar V. Purisima, Department of Finance, regarding Post Entry Audit Guidelines under the Fiscal Intelligence Unit, Department of Finance, pursuant to Executive Order No. 155, s. 2013.

For your information and guidance.

Please confirm the dissemination of this circular throughout your offices within fifteen (15) days from receipt hereof.


JOHN P. SEVILLA
Commissioner



JUN 25 2014



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DEPARTMENT ORDER NO. 044.2014
17 June 2014

SUBJECT: POST ENTRY AUDIT GUIDELINES UNDER THE FISCAL INTELLIGENCE UNIT, DEPARTMENT OF FINANCE, PURSUANT TO EXECUTIVE ORDER NO. 155, S. 2013

WHEREAS, Section 3515 of the Tariff and Customs Code of the Philippines ("TCCP"), as amended by Republic Act No. 9135, authorizes the conduct of audit examination, inspection, verification and/or investigation of transaction records of importers and brokers;

WHEREAS, Executive Order No. 155, Series of 2013, implements Section 3515 of the TCCP by mandating the Fiscal Intelligence Unit of the Department of Finance ("DOF-FIU") to perform post-entry audits of import transactions;

WHEREAS, there is a need to issue guidelines and procedures in the performance by the DOF-FIU of the foregoing functions and responsibilities to guide the public and the government officials concerned;

NOW, THEREFORE, in consideration of the foregoing premises, the following rules and regulations are hereby promulgated:

Section 1. *Importer and Import Selection.* - Through a computer-aided risk management system, the DOF-FIU shall identify the importers and import entries to be subjected to post-entry audit based on certain objective and quantifiable data, which shall include but not be limited to the following:

- a) Existing independent studies and information on imported products determined to have a high risk of being subject to erroneous classification, misdeclaration or undervaluation;
- b) Relative magnitude of customs revenue from certain imported products;
- c) Relative magnitude of customs revenue from identified imported products from the importer;
- d) Relative magnitude of customs revenue from the importer;
- e) The rates of duties of the importer's imports;
- f) The compliance track records of the importer; and
- g) An assessment of the risk to revenue of the importer's import activities.

Upon selection of the importers and import entries to be subject to audit, the DOF-FIU may analyze the selected import entries to determine whether there exists a potential valuation, classification and/or other compliance issue.

Section 2. *Coordination with the BIR* - Upon the selection of the importer or import entry to be subject to post entry audit, the DOF-FIU shall inform the Bureau of Internal Revenue ("BIR") of the selection of the importer and the grounds therefor. The BIR may issue a Letter of Authority for its personnel to investigate and examine the importer's records and books of accounts for any deficiency taxes in accordance with the provisions of the National Internal Revenue Code.

Section 3. *Notice of Post-Entry Audit Findings*. - Upon the determination by the DOF-FIU of any deficiency in the duties declared and paid on any importation of goods and articles into the Philippines, the DOF-FIU shall notify the importer concerned by sending *Post-Entry Audit Findings* ("PEAF") to the importer's address stated in the import entry filed with the Bureau of Customs ("BOC") for the importation. The PEAF to be issued by the DOF-FIU to the importer shall state the specific import transactions covered, the amount of deficiency duties found thereon, and the basis of the findings, and shall contain a notice that the findings of deficiency duties shall be submitted to the BOC and the BIR, unless said deficiencies are satisfactorily explained by the importer in accordance with the provisions of this Department Order. In such PEAF, the DOF-FIU shall allow the importer to submit relevant supporting documents, which include, but are not limited to, the documents listed in Annex "A" hereof.

Section 4. *Single Comprehensive Reply*. - Within a non-extendible period of thirty (30) calendar days from the importer's receipt of the PEAF, the importer shall be allowed to file one *Reply to PEAF* with the DOF-FIU, to be sworn under oath. The *Reply to PEAF* shall state whether the importer admits, or disagrees with, each of the findings in the PEAF. In the event that the importer disagrees with any of the findings in the PEAF, the importer shall state all reasons therefor.

For findings to which the importer disagrees, the *Reply to PEAF* shall be supported by certified true copies of documents which may be relevant to the findings. Copies submitted to the DOF-FIU of any supporting documents, which have previously been filed with any government agency, must be certified true and correct by the government agency concerned; otherwise, copies of any other supporting documents must be certified true and correct by the person or entity which executed the same.

In case the importer is a natural person, the *Reply to PEAF* shall be executed personally by him. In case the importer is a partnership, the *Reply to PEAF* shall be executed by any partner who was duly authorized in writing and under oath by the partners holding a majority interest in the equity of the partnership. In case the importer is a corporation, the *Reply to PEAF* shall be executed by an officer duly authorized by the Board of Directors, in which case, the importer shall submit a Secretary's Certificate attesting to the passage and continuing validity of resolutions of its Board of Directors

approving and authorizing the submission of the *Reply to PEA* and all other documents attached thereto, and designating its official representative for said purpose.

Section 5. *Strictly No Contact Policy.* – Under no circumstance shall the DOF-FIU hold a conference with the importer and broker or any of the importer or broker's officers, agents or representatives regarding any finding stated in the *PEAF*. Any official or employee of the DOF-FIU found to have committed a violation of this provision shall be held administratively liable, without prejudice to any civil or criminal proceedings which may be filed against such erring official or employee.

Section 6. *Notice of Acceptance of Explanations.* – If the DOF-FIU finds all explanations stated in the *Reply to PEA* to be satisfactory, the DOF-FIU shall notify the importer that it accepts the explanations, copy furnished the BOC and the BIR.

Section 7. *Final Audit Report and Recommendation.* –The DOF-FIU shall submit a *Final Audit Report and Recommendation* ("FARR") to the BOC and/or the BIR, as the case may be, in any of the following instances:

- a. The *Reply to PEA* states that the importer admits any of the findings in the *PEAF*, in which case the *FARR* shall contain a recommendation that the BOC collect the admitted deficiency duties;
- b. The DOF-FIU finds that any of the explanations contained in the *Reply to PEA* is not satisfactory, in which case the *FARR* shall state the reasons for said findings, such as lack of proper substantiation, and shall contain a recommendation that a formal assessment be issued to the importer; or
- c. No *Reply to PEA* is filed within the period prescribed in Section 4 hereof for the filing of the same.

In any of the foregoing instances, the *FARR* shall include a recommendation on the administrative fines and penalties to be imposed on the importer.

The *PEAF* issued to the importer and the *Reply to PEA* filed by the importer, if any, shall be attached to the *FARR*.

Section 8. *Investigation of Broker.* – If, upon review of all the documents submitted by the importer and such other documents as may be available to the DOF-FIU, there is *prima facie* evidence that the broker committed violations of the Tariff and Customs Code in relation to the transaction/s under consideration, the DOF-FIU may also submit to the BOC a report on its findings with appropriate recommendations.

Section 9. *Assessment and Collection.* – Within five (5) days from receipt of the *FARR*, the Commissioner of Customs shall issue to the importer:

- a. A collection letter directing the importer to pay, within ten (10) working days from receipt thereof, the deficiency duties admitted in the *Reply to PEAFF*, and the appropriate fines and penalties; and/or
- b. A formal assessment of deficiency duties and demand letter directing the importer to pay, within ten (10) working days from receipt thereof, the deficiency duties not admitted in the *Reply to PEAFF*, and the appropriate fines and penalties.

Within five (5) days from receipt of the *FARR*, the Commissioner of Internal Revenue shall act on the findings stated in the *FARR* in accordance with the provisions of the National Internal Revenue Code of 1997, as amended.

Section 10. *Failure to Pay Deficiency Duties.* -- Should the importer fail to pay the deficiency duties and penalties stated in the collection letter and/or formal assessment of deficiency duties within the period prescribed in Section 8 hereof, the Commissioner of Customs shall immediately impose the following sanctions:

- a. Revoke, cancel and withdraw the accreditation privileges granted to the importer in accordance with existing rules and regulations; and
- b. Avail of the administrative and judicial remedies provided for by law and rules and regulations.

Section 11. *Failure to Pay Deficiency Taxes.* -- Should the importer fail to pay the deficiency taxes and penalties as may be assessed by the BIR, the Commissioner of Internal Revenue shall take appropriate action in accordance with the provisions of the National Internal Revenue Code of 1997, as amended.

In addition, the Commissioner of Internal Revenue shall inform the Commissioner of Customs in writing of such failure of the importer to pay the deficiency taxes and penalties. The Commissioner of Customs shall then immediately impose the same sanctions provided under **Section 10** hereof.

Section 12. *Report on Assessment and Collection.* -- Within thirty (30) days from receipt of the *FARR*, and every last day of the month thereafter, the BOC and/or the BIR, as the case may be, shall submit to the Secretary of Finance a report on the official actions that have been taken and shall be taken on the *FARR*.

Section 13. *Authority to Compromise.* -- Nothing in this Department Order shall be interpreted to preclude the Commissioner of Customs from exercising his power to compromise, subject to the approval of the Secretary of Finance, the imposition of the appropriate fines and surcharges on the deficiency duties provided for under Section 2316 of the TCCP.

Section 14. *Repealing Clause.* – All provisions of orders, memoranda, circulars or other issuances or parts thereof which are inconsistent with this Department Order are hereby deemed repealed and/or modified accordingly.

Section 15. *Separability Clause.* – If any provision of this Department Order is declared by the courts as unconstitutional or contrary to existing laws, the other provisions hereof shall remain in full force and effect.

Section 16. *Effectivity.* – This Department Order shall take effect fifteen (15) days after publication.



CESAR V. PURISIMA
Secretary

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