

ADMINISTRATIVE ORDER NO. 8
Series of 1988

10/11/88

(28)
SUBJECT: GUIDELINES AND PROCEDURES IMPLEMENTING
PRODUCTION AND PROFIT SHARING UNDER
REPUBLIC ACT NO. 6657

WHEREAS, Republic Act No. 6657, The Comprehensive Agrarian Reform Law of 1988, which took effect on June 15, 1988 provides these two sections on Production and Profit Sharing:

"Section 13. - Production Sharing Plan - Any enterprise adopting the scheme provided for in Section 32 hereof or operating under a production venture, lease, management contract or other similar arrangement and any farm covered by Sections 8 and 11 hereof is hereby mandated to execute within ninety (90) days from the effectivity of this Act, a production sharing plan, under guidelines prescribed by the appropriate government agency.

Nothing herein shall be construed to sanction the diminution of any benefits such as salaries, bonuses, leaves and working conditions granted to the employee-beneficiaries under existing laws, agreements, and voluntary practice by the enterprise, nor shall the enterprise and its employee-beneficiaries be prevented from entering into any agreement with terms more favorable to the latter.

"Section 32. Production Sharing. - Pending final land transfer, individuals and entities owning, or operating under lease or management contract, agricultural lands are hereby mandated to execute a production sharing plan with their farmworkers or farmworkers' organization, if any, whereby three percent (3%) of the gross sales from the production of such lands are distributed within sixty (60) days of the end of the fiscal year as compensation to regular and other farmworkers in such lands over and above the compensation they currently receive: Provided, That these individuals or entities realize gross sales in excess of five million pesos per annum unless the DAR, upon proper application, determines a lower ceiling.

8
In the event that the individual or entity realizes a profit, an additional ten percent (10%) of the net profit after tax shall be distributed to said regular and other farmworkers within ninety (90) days of the end of the fiscal year.

To forestall any disruption in the normal operation on lands to be turned over to the farmworker-beneficiaries mentioned above, a transitory period, the length of which shall be determined by the DAR, shall be established.

During this transitory period, at least one percent (1%) of the gross sales of the entity shall be distributed to the managerial, supervisory and technical group in place at the time of effectivity of this Act, as compensation for such transitory managerial and technical functions as it will perform, pursuant to an agreement that the farmworker-beneficiaries and the managerial, supervisory and technical group may conclude, subject to the approval of the DAR."

NOW, THEREFORE, to ensure an orderly and effective implementation of the above provisions, the following Guidelines and Procedures are hereby promulgated for the guidance of all concerned.

Section 1. - Definition of Terms. - As used in these Guidelines and Procedures, the following terms shall have the following respective meanings:

a. "Agriculture, Agricultural Enterprise or Agricultural Activity" means the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical.

b. "Agricultural Land" refers to land devoted to agricultural activity as defined above and not classified as mineral, forest, residential, commercial, industrial or national park.

c. "Farmworker" is a natural person who renders service for value as an employee or laborer in an agricultural enterprise or farm regardless of whether his compensation is paid on a daily, weekly, monthly or "pakyaw" basis. The term includes an individual whose work has ceased as a consequence of, or in connection with, a pending agrarian dispute and who has not obtained a substantially equivalent and regular farm employment.

c.1 "Regular Farmworker" is a natural person who is employed on a permanent basis by an agricultural enterprise or farm.

c.2 "Seasonal Farmworker" is a natural person who is employed on a recurrent, periodic or intermittent basis by an agricultural enterprise or farm, whether as a permanent or a non-permanent laborer, such as "dumaan", "sacada", and the like.

c.3 "Other Farmworker" is a farmworker who does not fall under paragraphs (c), (c.1) and (c.2).

d. "Managerial or Supervisory Farmworker" is a natural person who is employed by an agricultural enterprise or farm vested with powers or prerogatives: (1) to lay down and execute management policies; (2) to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; and/or (3) to effectively recommend such managerial actions.

e. "Technical Farmworker" is a natural person who is employed by an agricultural enterprise or farm who is highly educated and trained performing functions in scientific, engineering, medical, teaching and other fields, but not vested with managerial or supervisory functions. Examples of such employees are: chemists, agronomists, veterinarians, soil analysts and the like.

f. "Gross Sales" means the total annual revenue from the sale of all agricultural products, in their raw or original state, derived from the land or farm owned, operated under lease, management, production venture, grower or service contract, or other similar arrangement by an agricultural enterprise. Simple post-harvest operations ordinarily done within the farm to preserve or prepare agricultural products for the market, such as drying, salting, smoking or stripping, are considered agricultural activities. In cases where retention right is allowed under Section 6 of RA 6657, the amount of gross sales may be reduced by an amount equivalent to such proportion that the retained area bears in relation to total land area.

g. "Regular Annual Compensation" includes all cash remuneration or earnings regularly paid to an employee by an employer for services rendered within a year, such as salaries, wages, 13th Month Pay, bonus, allowances, commissions and paid leaves, and other income of similar nature, whether mandated by law or provided by collective bargaining agreement or established company practices, but excludes payment arising from the production/profit sharing provided herein.

8 Section 2. - Employers Covered. - Pending final land or corporate stock transfer, the following employers are covered by the mandated production and profit sharing under RA 6657:

a. Any enterprise owning or operating under lease, management contract, production venture or other similar arrangement, agricultural lands;

b. Multinational corporations engaged in agricultural activities;

c. Commercial farms devoted to commercial livestock, poultry and swine raising, aquaculture including saltbeds, fishponds and prawn ponds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations.

Provided, that the employer realizes gross sales in excess of Five Million Pesos (P5M) per annum. Provided, however, that the Department of Agrarian Reform (DAR), when necessary, may establish a ceiling lower than P5 million per annum.

Individuals or entities with business operations other than agricultural, only the divisions, groups or units involved in agricultural activities are included in the mandated production/profit sharing.

Public lands classified as inalienable and which are under reservation in favor of the Bureau of Prisons now utilized for agriculture by corporations or entities in cooperation with local entities under any system of land tenure, usage, cultivation, or management shall be covered by the production and profit shares provided herein. Provided, however, that the production and profit shares shall inure or accrue to the benefit of the Bureau of Prisons.

Section 3. - Employees Covered. - All farmworkers, whether classified as regular, seasonal, technical or other farmworker but excluding managerial and supervisory employees, of covered employers are included in the mandated production sharing and profit sharing. Provided, that any farmworker who renders service, regardless of duration, within a covered period shall be entitled to this benefit. Provided, further, that in the absence of any Presidential Agrarian Reform Council (PARC) determination on a specific award limit, the farmworker-beneficiary does not own more than three (3) hectares of agricultural land.

Section 4. - Features of the Mandated Production/Profit Sharing Plan. - Covered employers shall prepare and execute a Production/Profit Sharing Plan not later than sixty (60) days from the effectivity of this guidelines and procedures which shall conform to the following requirements:

a. The effectivity date of the plan is June 15, 1988.

b. Covered employers are obligated to pay the following production and profit shares to be given over and above the compensation their farmworkers currently receive and which shall be distributed based on the following schedule:

Amount of Production Share :

3.0% of Annual Gross Sales from June 15, 1988 until final land or corporate stock transfer to the

farmworker-beneficiaries, provided that the employer is not obligated to pay more than 100% of the regular annual compensation of the farmworker-beneficiaries.

Schedule of Distribution :

50% of estimated Production Share (based on unaudited financial statements) shall be distributed within 60 days of the end of the accounting year and the balance (based on audited financial statements) payable not more than 60 days thereafter.

Amount of Profit Share :

10% of Net Profit after tax provided that the employer is not obligated to pay more than 100% of the regular annual compensation of the farmworker-beneficiaries. Provided, however, in cases wherein retention right is allowed under Section 6 of R.A. 6657, the amount of Net Profit After Tax may be reduced by an amount equivalent to such proportion that the retained area bears in relation to total land area.

An illustrative formula for the computation of total profit share and net profit after tax is shown in Annex A.

Schedule of Distribution :

50% of estimated Profit Share (based on unaudited financial statements) shall be distributed within 90 days of the end of the accounting year and the balance (based on audited financial statements) payable not more than 60 days thereafter.

c. The formulas to be used in computing the production and profit shares of individual workers are shown in Annex B.

d. The first year of implementation of the plan shall start on the accounting year (i.e. fiscal, crop or calendar year followed by a covered employer) ending after June 15, 1988. During the first accounting year period covered, the employer's gross sales for a full year period shall be considered to determine whether the employer realizes annual gross sales of over P5 million for purposes of coverage under production/profit sharing. However, the gross sales and net profit after tax to be considered in computing covered workers' production and profit shares shall be based on a pro-rata basis as shown in the illustrative examples under Annex C.

Section 5. -Manner of Payment.- The Production/Profit Shares of the workers shall be paid in cash. Such additional compensation shall be in separate payrolls which shall contain information on: the employer's gross sales and net profit; the total amount for distribution as workers' production/profit shares; each worker's number of paid days for the year; and each worker's production/profit share.

Section 6. -Production Share for Managerial and Supervisory Group - To forestall any possible disruption in the normal operation on lands to be turned over to the farmworker-beneficiaries, a transitory period, the length of which shall be determined by the DAR, may be established.

During this transitory period, at least one percent (1%) of the gross sales of the entity concerned shall be distributed to the managerial and supervisory group in place at the time, as additional compensation for such transitory managerial and supervisory functions as it will perform, pursuant to an agreement that the farmworker-beneficiaries and the managerial and supervisory group may conclude, subject to the approval of the DAR.

Section 7. -Undistributed/Unclaimed Production/Profit Share.- Unless otherwise provided by existing law, agreement or plan, all undistributed or unclaimed production/profit shares shall be deposited by the employer with the nearest Land Bank of the Philippines Branch in the name of the Secretary of Agrarian Reform for payment to workers to whom they are due. The employer shall immediately report such deposits to the nearest DAR office and send notices to the worker-beneficiaries. If the money remains undistributed or unclaimed after two years from date of deposit, the same shall be considered forfeited and shall be turned over to the Agrarian Reform Fund.

Section 8. -Effect on Existing Production/Profit Sharing Plans.- Any existing production/profit sharing plan granted by the employer before the promulgation of EO 229 and RA 6657 shall be credited, unless otherwise provided by agreement, as compliance with the mandated production/profit sharing plan prescribed herein, subject to prior approval by the DAR. Provided, that where the benefit under the existing production/profit sharing plan is less than the applicable amount required in these Guidelines and Procedures, the employer shall pay the difference.

Nothing herein shall be construed to sanction the diminution of any benefits such as salaries, bonuses, leaves and working conditions granted to the worker-beneficiaries under existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between workers and employers. nor shall the enterprise and its worker-beneficiaries be prevented from entering into any agreement with terms more favorable to the latter.

Section 9. -Enforcement.- The Secretary of Agrarian Reform or his authorized representatives shall have the power to order and administer compliance with the production/profit sharing provisions and to require submission of reports, compel the production of books and documents and answers to interrogatories and issue subpoena and subpoena duces tecum and to enforce its writs through sheriffs or other duly deputized officers. Violation of any provision of these Guidelines and Procedures shall be subject to penalty as provided under Section 12 hereof.

Section 10. -Settlement of Disputes.- Issues involving production/profit sharing shall be considered as Agrarian Reform issues. Disputes arising from production/profit sharing shall first be settled voluntarily between the parties. In the event of a deadlock, such dispute shall be submitted for conciliation to the appropriate DAR Regional Office. In case the dispute is not resolved at the regional level, it shall be forwarded for adjudication to the DAR Adjudication Board.

Section 11. -Reporting Requirements.- All covered employers shall submit a report of the production/profit shares distributed, including the special payrolls, under oath signed by the employer or his duly authorized representatives, not later than 30 days after completion of distribution of the workers' shares. Two copies of the report shall be submitted to the appropriate DAR Regional Office.

The report shall conform substantially to the following form:

Report on Compliance with Production/Profit Sharing

1. Name of Establishment/Employer
2. Address
3. Principal Commodity Produced
4. Total Employment
5. Total Gross Sales/Net Profit After Tax
6. Amount of Production/Profit Shares Distributed
7. No. of Workers Benefited
8. Average Amount Received per Worker
9. Dates of Distribution of Production/Profit Shares
10. Total Undistributed/Unclaimed Production/Profit Shares
11. No. of Workers with Undistributed/Unclaimed Production/Profit Shares

Section 12. -Penalties.- The provisions of Sections 73 and 74 of RA 6657 with regard to Prohibited Acts and Omissions, and Penalties, respectively, shall apply to any person or entity found to be violating any provision of these Guidelines and Procedures.

Section 13. -Separability Clause.- If, for any reason, any section or provision hereof is declared null and void, no other section, provision, or part thereof shall be affected and the same shall remain in full force and effect.

Section 14. -Effectivity Clause.- These Guidelines and Procedures shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

Quezon City, September _____, 1988


PHILIP ELLA JUICO
Secretary
D A R

ANNEX A.1

Computation for ACTUAL Income Tax:

Gross Sales.....	10,000,000.00
Cost of Sales.....	(5,000,000.00)
Operating Expenses.....	(3,000,000.00)
Production Share.....	(285,000.00)
Profit Share.....	(98,568.07)

Net Profit Before Tax.....	1,616,431.93
Tax (35% of 1,616,431.93).....	(565,751.17)

Net Profit After Tax.....	1,050,680.76
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(Refer next page for individual taxpayers)

8

ANNEX A

ILLUSTRATIVE FORMULA FOR THE COMPUTATION OF
PROFIT SHARE AND NET INCOME AFTER TAX

In the case of corporate taxpayers:

Given: Tax Rate = 35%
Profit Share = 10% of Net Income After Tax After Profit Share

Formula:

$$Y = \text{Net Income After Tax After Profit Share}$$

$$Y = \frac{0.65 \times \text{Net Income Before Tax Before Profit Share}}{1.065}$$

Where X = Net Income Before Tax Before Profit Share
 $Y = X - [0.35(X - 0.10Y) + 0.10Y]$
 $Y = X - [0.35X - 0.035Y + 0.10Y]$
 $Y = X - [0.35X + 0.065Y]$
 $Y = X - 0.35X - 0.065Y$
 $1.065Y = 0.65X$
 $Y = 0.65X / 1.065$

Example:

Assuming: Gross Sales:10,000,000;Cost of Sales:5,000,000;
Operating Expenses:3,000,000
Area:100 has; Retention:5 has.(=5/100 or 5%)

Gross Sales.....	9,500,000.00	[95%]
Cost of Sales.....	(4,750,000.00)	[95%]
Operating Expenses.....	(2,850,000.00)	[95%]
Production Share (3% of gross sales).....	(285,000.00)	

Net Income Before Tax Before Profit Share.....	1,615,000.00
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Net Income After Tax After Profit Share	0.65 X 1,615,000	=	1.065	=	985,680.76
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Profit Share (10% X 985,680.76)....(98,568.07)

Net Income Before Tax After Profit Share.....	1,516,431.93
Tax (35% X 1,516,431.93).....	(530,751.17)
Net Income After Tax After Profit Share.....	985,680.76

(Refer next page for ACTUAL Income Tax computation)

ANNEX A.2

In the case of individual taxpayers:

$$\text{PROFIT SHARE} = \frac{0.1A - 0.1 [B (A - C) + D]}{1 + 0.1 - 0.1B}$$

Where A = Net Income Before Tax Before Profit Share
 B = Income Tax Rate
 C = Net Income subject to B
 D = Fixed Income Tax

Profit Share = 10% of Net Income After Tax After Profit Share
 = 10% X (Net Income Before Tax Before Profit Share
 Minus Tax Minus Profit Share)

Tax = Rate X (Net Income Before Tax Before Profit Share Minus
 Profit Share Minus Fixed Income Subject to Tax)
 Plus Fixed Income Tax

Let X = Profit Share

$$X = 0.10[A - X - (B[A - X - C] + D)]$$

$$X = 0.10A - 0.10X - 0.10(BA - BX - BC + D)$$

$$X = 0.10A - 0.10X - 0.10BA + 0.10BX + 0.10BC + 0.10D$$

$$X + 0.10X - 0.10BX = 0.10A - 0.10BA + 0.10BC - 0.10D$$

$$X = \frac{0.10A - 0.10[B(A - C) + D]}{1 + 0.10 - 0.10B}$$

T A B L E

Income Before Tax Before Profit Share (A)	Computation for Tax		
	(B)	(C)	(D)
Under 2,751	0%		
2,751 - 5,525	1% of excess over	2,500 +	0
5,526 - 11,188	3% of excess over	5,000 +	25
11,189 - 22,983	7% of excess over	10,000 +	175
22,984 - 47,617	11% of excess over	20,000 +	875
47,618 - 73,499	15% of excess over	40,000 +	3,075
73,500 - 128,387	19% of excess over	60,000 +	6,075
128,388 - 269,541	24% of excess over	100,000 +	13,975
269,542 - 722,576	29% of excess over	250,000 +	49,675
Over 722,577	35% of excess over	500,000 +	122,175

IMPORTANT: THE FORMULA FOR INDIVIDUAL TAXPAYERS COMPUTES ALREADY FOR PROFIT SHARE WHILE THE FORMULA FOR CORPORATE TAXPAYERS COMPUTES FOR NET INCOME AFTER TAX AFTER PROFIT SHARE AND THUS NEEDS TO BE MULTIPLIED BY 10% TO ARRIVE AT PROFIT SHARE

NOTE: BOTH FORMULAE ASSUMES THAT THE ENTIRE PROFIT SHARE WILL BE DISTRIBUTED; SHOULD THE 100% OF ANNUAL COMPENSATION CEILING BE A LOWER FIGURE THEN THIS FIGURE WILL BE THE PROFIT SHARE TO BE DISTRIBUTED

ANNEX A.3

Example:

Assuming: Gross Sales:10,000,000;Cost of Sales:5,000,000;
 Operating Expenses:3,000,000
 Area:100 has;Retention:5 has (=5/100 or 5%)

Gross Sales.....	9,500,000.00	[95%]
Cost of Sales.....	(4,750,000.00)	[95%]
Operating Expenses.....	(2,850,000.00)	[95%]
Production Share (3% of gross sales).....	(285,000.00)	

Net Income Before Tax		
Before Profit Share.....	1,615,000.00	
Profit Share (See Computation A).....	(103,528.17)	

Net Income Before Tax		
After Profit Share.....	1,511,471.83	
Tax (See Computation B).....	476,190.14	

Net Income After Tax		
After Profit Share.....	1,035,281.69	
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Proof: Profit Share = 1,035,281.69 X 10% = 103,528.17

Computation A:

Profit Share

$$= \frac{0.1(1,615,000) - 0.1[0.35(1,615,000 - 500,000) + 122,175]}{1 + 0.1 - 0.1(.35)}$$

$$= \frac{161,500 - 0.1(390,250 + 122,175)}{1 + 0.1 - 0.035}$$

$$= \frac{161,500 - 51,242.50}{1.1 - 0.035}$$

$$= \frac{110,257.50}{1.065}$$

$$= 103,528.17$$

(Refer to Computation B next page)

ANNEX A.4

Computation B:

$$\begin{aligned} \text{Tax} &= 0.35(1,511,471.83 - 500,000) + 122,175 \\ &= 0.35(1,011,471.83) + 122,175 \\ &= 354,015.14 + 122,175 \\ &= 476,190.14 \end{aligned}$$

Computation for ACTUAL Income Tax:

Gross Sales.....	10,000,000.00
Cost of Sales.....	(5,000,000.00)
Operating Expenses.....	(3,000,000.00)
Production Share.....	(285,000.00)
Profit Share.....	(103,528.83)

Net Profit Before Tax.....	1,611,471.83
Tax (See Computation C).....	(511,190.14)

Net Profit After Tax.....	1,100,281.69
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Computation C

$$\begin{aligned} \text{Tax} &= 0.35(1,611,471.83 - 500,000) + 122,175 \\ &= 0.35(1,111,471.83) + 122,175 \\ &= 389,015.14 + 122,175 \\ &= 511,190.14 \end{aligned}$$

ANNEX B

FORMULAS FOR COMPUTING PRODUCTION AND PROFIT SHARES
OF INDIVIDUAL WORKERS

Production Share
per covered worker = 3.0% of Annual Gross Sales multiplied by
under RA 6657 Factor Y, but not to exceed 100% of the
worker's regular annual compensation

Profit Share
per covered worker = 10% of Net Profit after tax multiplied
under RA 6657 by Factor Y, but not to exceed 100% of
the worker's regular annual compensation

Where Factor Y = $\frac{\text{No. of paid days of covered worker for the year}}{\text{Total number of paid days of all covered workers for the year}}$

ANNEX C

ILLUSTRATIVE EXAMPLES FOR COMPUTING PRODUCTION AND PROFIT
SHARES OF INDIVIDUAL WORKERS

EXAMPLE 1. The employer's accounting year ends on December 31.

Computations for January-December 1988:

Prod. Share
for Worker A = $\frac{3.0\% \text{ Annual Gross Sales (1/1-12/31)}}{360}$ multiplied by

Number of days from 6/15/88 to 12/31/88 multiplied by
 $\frac{\text{No. of paid days of worker A (1/1-12/31)}}{\text{Total no. of paid days of all covered workers (1/1-12/31)}}$

But not to exceed his regular annual compensation
from 1/1 to 12/31.

Profit Share
for Worker A = $\frac{10\% \text{ Net Profit (1/1-12/31)}}{360}$ multiplied by

No. of days from 6/15 to 12/31 multiplied by
 $\frac{\text{No. of paid days of worker A (1/1-12/31)}}{\text{Total no. of paid days of all covered workers (1/1-12/31)}}$

But not to exceed his regular annual compensation
from 1/1 to 12/31.