

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

March 31, 2003

REVENUE REGULATIONS NO. 17-2003

SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

TO : All Withholding Agents, Internal Revenue Officers and Employees and Others Concerned

SECTION 1. SCOPE. - Pursuant to the provisions of Section 244, in relation to Sections 24(A), 24(D)(1), 25, 27(A), 27(D)(5), 34(K), 57(A), 57(B), 58, 151, 173, 196 and 245, all of the National Internal Revenue Code of 1997 (Code), as amended, these regulations are hereby promulgated to further amend portions of Revenue Regulations Nos. 2-98 and 13-99, as amended, providing for additional income payments subject to creditable withholding tax; clarifying existing provisions on income payments subject to creditable/expanded withholding tax and the requirements for deductibility of certain payments; providing for withholding as the mode of remitting final capital gains tax on the sale of real property classified as capital asset, and for other purposes.

SEC. 2. INCOME PAYMENTS SUBJECT TO FINAL WITHHOLDING TAX.
– Sec. 2.57.1 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

“Sec. 2.57.1. Income Payments Subject to Final Withholding Tax.

– The following forms of income shall be subject to final withholding tax at the rates herein specified:

(A) Income payments to a citizen or to a resident alien individual.

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(6) On capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code (i.e., the authority of the

Commissioner to prescribe real property values), whichever is higher – Six percent (6%).

In case of sale on installment of real property classified as capital asset, the procedures stated under Sec. 2.57.2(J) hereof on the sale of real property classified as ordinary asset shall apply with the exception that the withholding tax on the former shall be final whereas that on the latter shall be creditable.

In case of dispositions of real property classified as capital asset by individuals to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations, the tax to be imposed shall be determined either under Section 24(A) of the Code for the normal rate of income tax for individual citizens or residents or under Section 24(D)(1) of the Code for the final tax on the presumed capital gains from sale of property at six percent (6%), at the option of the taxpayer-seller.

In case of sale/transfer of principal residence, the Buyer/Transferee shall withhold from the seller and shall deduct from the agreed selling price/consideration the 6% capital gains tax which shall be deposited in cash or manager's check in interest-bearing account with an Authorized Agent Bank (AAB) under an Escrow Agreement between the concerned Revenue District Officer, the Seller and the Transferee, and the AAB to the effect that the amount so deposited, including its interest yield, shall only be released to such Transferor upon certification by the said RDO that the proceeds of the sale/disposition thereof has, in fact, been utilized in the acquisition or construction of the Seller/Transferor's new principal residence within eighteen (18) calendar months from date of the said sale or disposition. The date of sale or disposition of a property refers to the date of notarization of the document evidencing the transfer of said property. In general, the term "Escrow" means a scroll, writing or deed, delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee.

After depositing the amount representing the six percent (6%) capital gains tax as mentioned above, the Buyer/Transferee and the Seller, shall jointly file, within thirty (30) days from the date of the sale or disposition of the principal residence, with the Revenue District Office having jurisdiction over the property, in duplicate, the Final Capital Gains Tax Return (BIR Form No. 1706, or any form number assigned by the BIR), covering the property bought with no computed tax due stating that the supposed-tax due/amount so withheld by the buyer is maintained in an escrow account, which amount will be used to satisfy future tax liability, if any, on the subject transaction. For purposes of the capital gains tax otherwise due on the sale, exchange or disposition of the said Principal Residence, the execution of the Escrow Agreement referred to in the immediately preceding paragraph shall be considered sufficient. The tax return so filed in pursuance hereof shall bear the addresses of both the seller and the buyer.

If within thirty (30) days after the lapse of the aforesaid 18-month period, the Seller/Transferor fails to submit documentary evidence showing that he has utilized the proceeds of sale or disposition of his old principal residence to acquire/construct his new principal residence, he shall be treated as deficient in the payment of his capital gains tax on the sale or disposition of his aforesaid *Principal Residence*, and shall be accordingly assessed for deficiency capital gains tax, inclusive of penalties and the 20% interest per annum computed from the 31st day after the date of sale/disposition of the said principal residence, pursuant to the provisions of Section 228 of the Code, as implemented by Revenue Regulations No. 12-99, in relation to Section 249 of the said Code.

In the issuance of assessments, the Seller shall receive all the required notices following existing procedures. Upon the time that the said deficiency tax assessment has become final and executory, the deposit in escrow, inclusive of its interest earnings, shall be forfeited and applied against the deficiency capital gains tax liability. If the same is insufficient to cover the entire amount assessed, the Seller/Transferor shall remain liable for the remaining balance of the assessment. On the other hand, the excess of the deposit in escrow, if any, shall forthwith be returned to the Seller, by the Bank upon written authorization from the Commissioner or his duly authorized representative.

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(G) *Income Payment to a Domestic Corporation* – The following items of income shall be subject to a final withholding tax in the hands of domestic corporation, based on the gross amount thereof and at the rate of tax prescribed therefore:

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(5) On capital gains presumed to have been realized from the sale, exchange or other disposition of land and building located in the Philippines classified as capital assets, based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code, whichever is higher – Six percent (6%).

In case of sale on installment of real property classified as capital asset, the procedures stated under Sec. 2.57.2(J) hereof on the sale of real property classified as ordinary asset shall apply with the exception that the withholding tax on the former shall be final whereas that on the latter shall be creditable.

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SEC. 3. INCOME PAYMENTS SUBJECT TO CREDITABLE WITHHOLDING TAX .- Sec. 2.57.2 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

(I) Professional fees paid to medical practitioners. – Any amount collected for and paid to medical practitioners (includes doctors of medicine, doctors of veterinary science and dentists) by hospitals and clinics, or paid directly to the medical practitioners by patients who were ‘admitted and confined’ to such Hospitals or Clinics, or paid directly to such medical practitioners by health maintenance organizations (HMOs) and/or similar establishments which is likewise covered by Section 2.57.2 (A)(1). – Ten percent (10%);

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d) For this purpose, the term ‘medical practitioners’ shall likewise include medical technologists, allied health workers (e.g., occupational therapists, physical therapists, speech therapists, nurses, etc.) and other medical practitioners who are not under an employer-employee relationship with the hospital, clinic or HMO and other similar establishments.

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(J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange, or transfer of real property classified as ordinary asset. – xxx xxx

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If the buyer is an individual not engaged in trade or business, the following rules shall apply:

(i) If the sale is a sale of property on the installment plan (i.e., payments in the year of sale do not exceed twenty five percent (25%) of the selling price), no withholding is required to be made on the periodic installment payments. In such a case, the applicable rate of tax based on the gross selling price or fair market value of the property at the time of the execution of the contract to sell, whichever is higher, shall be withheld on the last installment or installments immediately prior to such last installment, if the last installment is not sufficient to cover the tax due, to be paid to the seller until the tax is fully paid.

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However, if the buyer is engaged in trade or business, whether a corporation or otherwise, these rules shall apply:

(i) If the sale is a sale of property on the installment plan [i.e., payments in the year of sale do not exceed twenty five percent (25%) of the selling price], the tax shall be deducted and withheld by the buyer from every installment which tax shall be based on the ratio of actual collection of the consideration against the agreed consideration appearing in the Contract to Sell applied to the gross selling price or fair market value of the property at the time of the execution of the Contract to Sell, whichever is higher.

The term 'consideration' refers to the selling price exclusive of interest. Interest earned as an incident of installment payment, if any, shall be subject to the ordinary income tax rate.

(ii) xxx xxx xxx

In any case, no Certificate Authorizing Registration (CAR)/Tax Clearance Certificate (TCL), shall be issued to the buyer unless the withholding tax due on the sale, transfer, or exchange of real property has been fully paid.

For sale of property on installment basis or deferred payment basis where the Contract to Sell is always executed before the execution of the Deed of Sale, the said Contract to Sell must be attached to the Deed of Absolute Sale executed upon completion of the payments and the duly notarized original duplicate copy of both documents must be presented to the RDO having jurisdiction of the place where the property is located for validation of the correctness of payment of all applicable taxes before the issuance of CAR/TCL.

It is to be noted, however, that in case of sale of real property paid under installment payment or deferred payment basis, the payment of the documentary stamp tax (DST) shall accrue upon the execution of the Deed of Absolute Sale but the basis for the imposition thereof shall be the gross selling price or fair market value of the property, whichever is higher, at the time of the execution of the Contract to Sell.

If upon completion of the payment of the purchase price of real property classified as ordinary asset, but before the execution of the Deed of Sale, the buyer decides to assign his right over the property to another person for a consideration, the assignment shall be considered a separate sale of real property and, therefore, **subject to the creditable/expanded withholding tax (EWT) or final withholding of capital gains tax, as the case may be**, which shall be withheld by the assignee of such property based on the consideration per Deed of Assignment or the fair market value of such property at the time of assignment, whichever is higher, **and to the DST imposed under Sec. 196 of the same Code** using the same basis.

It is to be clarified, however, that sale of interest in real property (real property purchased on installment covered by Contract to Sell which was sold by the original buyer before it was fully paid) shall be taxable on the part of the original buyer (now seller) based on the realized gain thereon which is measured by the difference between the agreed consideration and the amount actually paid by the said original buyer.

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(M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates

of withholding tax. – Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines

Supplier of goods - One percent (1%)

Supplier of services - Two percent (2%)

Top ten thousand (10,000) private corporations shall include a corporate taxpayer who has been determined and notified by the Bureau of Internal Revenue (BIR) as having satisfied any of the following criteria:

- a) Classified and duly notified by the Commissioner as a large taxpayer under Revenue Regulations No. 1-98, as amended (automatic inclusion);
- b) Any taxpayer with net VAT paid or payable for the preceding year of at least P100,000.00;
- c) Any taxpayer with annual income tax paid or payable for the preceding year of at least P200,000.00;
- d) Any taxpayer with percentage taxes for the preceding year of at least P100,000.00;
- e) Any taxpayer whose gross sales for the preceding year is over P10,000,000.00; or
- f) Any taxpayer whose gross purchases for the preceding year is over 5,000,000.00.

The term “goods” pertains to tangible personal property. It does not include intangible personal property as well as real property.

The term “local/resident supplier of goods” pertains to a supplier from whom any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not include a casual purchase of goods, that is, purchases made from non-regular suppliers and oftentimes involving single purchases. However, a single purchase which involves ten thousand pesos (P10,000.00) or more shall be subject to a withholding tax. The term “regular suppliers” refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax.

A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly

notified, in writing, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations.

Any corporation which has been duly classified and notified as large taxpayer by the Commissioner pursuant to RR 1-98, as amended, shall be automatically considered one of the top ten thousand (10,000) private corporations, provided, however, that its authority as a withholding agent shall be effective only upon receipt of written notice from the Commissioner that it has been classified as a large taxpayer, as well as one of the top ten thousand (10,000) private corporations, for purposes of these regulations.

Any corporation shall remain a withholding agent for purposes of these regulations, unless the Commissioner notifies it in writing that it shall cease to be one. The following, however, are some of the reasons that a taxpayer shall automatically cease to be a withholding agent, and therefore no prior written notice, for purposes of these Regulations, is required, to wit:

- a) closure/ cessation of business/ dissolution (for taxpayer with notice of dissolution given to the BIR);
- b) merger/consolidation (for dissolved or absorbed corporation);
- c) any other form of business combination wherein by operation of law a corporate taxpayer loses its juridical personality.

The withholding agent shall submit on a semestral basis a list of regular suppliers of goods and/or services to the Large Taxpayers Assistance Division/Large Taxpayers District Office in the case of large taxpayers duly notified as such pursuant to RR 1-98, as amended, or Revenue District Office having jurisdiction over the withholding agent's principal place of business on or before July 31 or January 31 of each year.

A government-owned or controlled corporation previously classified as one of the top five (5,000) corporations under RR 14-94, as amended, shall cease to be a withholding agent or included in the top ten thousand (10,000) private corporations for purposes of these regulations but rather shall be treated as one under the succeeding sub-section (N) since it is already withholding two percent (2%) of the amount paid for the purchase of goods/services from local/resident suppliers.

The Commissioner of Internal Revenue may recommend to the Secretary of Finance the amendment/modification to any or all of the criteria in the determination and selection of taxpayers forming part of the top ten thousand (10,000) private corporations after considering such factors as inflation, volume of business, and similar factors. Provided, however, That the Commissioner is empowered to conduct periodic review as to the number of taxpayers who ceased to qualify under the category of top ten thousand private corporations for purposes of delisting them or excluding them from the list and to identify taxpayers to be added to the list of top 10,000 private corporations. The top ten thousand (10,000) private corporations will be

announced through the issuance of a Revenue Memorandum Circular to be issued for this purpose.

All taxpayers previously included in the list of Top 5,000 Corporations under RR 12-94, as amended, shall continue to withhold the one percent (1%) withholding tax (which shall become 1% for supplier of goods and 2% for supplier of services upon the effectivity of these Regulations) unless any of the following situations occur: (a) the Commissioner communicates in writing that they have ceased to qualify as taxpayers includible in the list of top ten thousand private corporations, or (b) those officially identified to have ceased business operations, or undergone any of the business combinations wherein by operation of law the juridical personality of said taxpayers ceased.

(N) Income payments made by the government to its local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. – Income payments, except any casual or single purchase of P10,000.00 and below, which are made by a government office, national or local, including barangays, or their attached agencies or bodies, and government-owned or controlled corporations, on their purchases of goods and purchases of services from local/resident suppliers – Two per cent (2%).

A government-owned and controlled corporation shall withhold the tax in its capacity as a government-owned and controlled corporation rather than as a corporation stated in Subsection (M) hereof.

(O) Commissions of independent and/or exclusive sales representatives, and marketing agents of companies. – On gross commissions, rebates, discounts and other similar considerations paid/granted to independent and/or exclusive sales representatives and marketing agents and sub-agents of companies, including multi-level marketing companies, on their sale of goods or services by way of direct selling or similar arrangements where there is no transfer of title over the goods from the seller to the agent/sales representative. – Ten percent (10%)

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(S) Income payments made to suppliers of agricultural products. – Income payments made to regular agricultural suppliers such as those, but not limited to, payments made by hotels, restaurants, resorts, caterers, food processors, canneries, supermarkets, livestock, poultry, fish and marine food products dealers and all other establishments, except for income payments to casual agricultural suppliers where the annual gross purchases therefrom do not exceed P20,000 – One Percent (1%)

The term “regular agricultural suppliers” refers to suppliers with whom the taxpayer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous or current year. The term “casual agricultural supplier” refers to suppliers who did not qualify as regular agricultural supplier as defined in the preceding statement.

buyer resulting, therefore, to a net take to the seller of only the difference between the agreed consideration/selling price and the tax withheld.

(C) xxx xxx xxx”

SEC. 5. RETURNS AND PAYMENTS OF TAXES WITHHELD AT SOURCE.-

Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

“Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) *Monthly return and payment of taxes withheld at source.* –

(1) xxx xxx

(2) *WHEN TO FILE* –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.

Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24 (A) or under a final capital gains tax of six percent (6%) imposed under Sec. 24 (D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller’s filed income tax return reflecting the result of the subject real estate transaction.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof.”

SEC. 6. REQUIREMENTS FOR DEDUCTIBILITY OF CERTAIN INCOME PAYMENTS. – Section 2.58.5 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

“Sec. 2.58.5. Requirements for Deductibility. – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor’s gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.

A deduction will also be allowed in the following cases where no withholding of tax was made:

- (A) xxx xxx xxx ;
- (B) xxx xxx xxx ;
- (C) xxx xxx xxx ;

Items of deduction representing return of capital such as those pertaining to purchases of raw materials forming part of finished product or purchases of goods for resale, shall be allowed as deductions upon the withholding agent’s payment of the basic withholding tax and penalties incident to non-withholding or underwithholding.”

SEC. 7. WITHHOLDING OF PERCENTAGE TAX. – Section 5.116(A) of Revenue Regulations 2-98, as amended by Revenue Regulations 14-2002, is hereby further amended to exclude paragraph 12 from the enumeration of income payments subject to withholding of percentage tax which shall no longer apply due to the lapse of Republic Act No. 9010.

SEC. 8. REPEALING CLAUSE. – Portions of Revenue Regulations No 8-98 which require that the capital gains tax return shall be filed by the seller is hereby repealed. Pertinent portions of RR No. 13-99, as amended by RR No. 14-2000, and of all other existing rules and regulations such as Revenue Regulations No. 2-98, as amended, or of any revenue issuances or parts thereof which are inconsistent with the provisions of these Regulations are hereby revoked, repealed or amended accordingly.

SEC. 9. EFFECTIVITY. – These Regulations shall take effect on June 1, 2003 or after fifteen (15) days following publication in the newspaper of general circulation, whichever comes later and shall cover income payments made starting June 1, 2003.

(Original Signed)
JOSE ISIDRO N. CAMACHO
Secretary of Finance

Recommending Approval:

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