IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424, RELATIVE TO THE IMPOSITION OF INCOME TAXES ON INCOME DERIVED UNDER THE FO...

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Scope — Pursuant to Section 244, in relation to Sections 24, 25, 27 and 28 of the National Internal Revenue Code of 1997, as amended by R.A. No. 8424, these Regulations are hereby promulgated to govern the imposition of income taxes on income derived under the Foreign Currency Deposit and Offshore Banking Systems.

Sec. 2.22. Definition of Terms —

(A) Foreign Currency Deposit System — shall refer to the conduct of banking transactions whereby any person whether natural or juridical may deposit foreign currencies forming part of the Philippine international reserves, in accordance with the provisions of Republic Act No. 6426 entitled "An Act Instituting a Foreign Currency Deposit System in the Philippines, and For Other Purposes."

(B) Foreign Currency Deposit Unit (FCDU) — shall refer to that unit of a local bank or of a local branch of a foreign bank authorized by the Bangko Sentral Ng Pilipinas (BSP) to engage in foreign currency-denominated transactions, pursuant to the provisions of R.A. 6426, as amended. ("Local bank" shall refer to a thrift bank or a commercial bank organized under the laws of the Republic of the Philippines. "Local branch of a foreign bank" shall refer to a branch of a foreign bank doing business in the Philippines, pursuant to the provisions of R.A. No. 337, as amended).

(C) Offshore Banking System — shall refer to the conduct of banking transactions in foreign currencies involving the receipt of funds principally from external and internal sources and the utilization of such fund pursuant to Presidential Decree No. 1034 as implemented by CB (now BSP) Circular No. 1389, as amended.

(D) Offshore Banking Unit (OBU) — shall mean a branch, subsidiary or affiliate of a foreign banking corporation which is duly authorized by the Bangko Sentral Ng Pilipinas (BSP) to transact offshore banking business in the Philippines in accordance with the provisions of Presidential Decree No. 1034 as implemented by CB (now BSP) Circular No. 1389, as amended.

(E) Deposits — shall mean funds in foreign currencies which are accepted and held by an Offshore Banking Unit or Foreign Currency Deposit Unit in the regular course of business, with the obligation to return an equivalent amount to the owner thereof, with or without interest.

(F) Resident — shall mean

(1) an individual citizen of the Philippines residing therein; or

(2) an individual who is not a citizen of the Philippines but is permanently residing therein; or

(3) a corporation or other juridical person organized under the laws of the Philippines; or

(4) a branch, subsidiary, affiliate, extension office or other unit of corporations or juridical persons organized

under the laws of any foreign country operating in the Philippines.

(G) "Non-resident" — shall mean an individual, corporation or other juridical person not included in the above definition of "resident".

(H) Filipino Overseas Contract Worker (OCW) — means an individual citizen of the Philippines referred to under Section 23(C) of the Code.

A Filipino Seaman is a citizen of the Philippines who receives compensation for services rendered abroad as a member of the complement of an ocean-going vessel engaged exclusively in international trade as referred to under Section 23(C) of the Code.

Sec. 2.24. Income Tax Rate of Interest Income from Foreign Currency Deposit —

(A) Individual Income Tax on Interest Income from a Depository Bank under the Foreign Currency Deposit System

> (1) Interest income which is actually or constructively received by a resident citizen of the Philippines or by a resident alien individual from a foreign currency bank deposit shall be subject to a final withholding tax of seven and one-half percent (7.5%). The depository bank shall withhold and remit the tax pursuant to Sections 57 and 58 (withholding tax at source) of the Code.
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> (2) If a bank account is jointly in the name of a non-resident citizen such as an overseas contract worker, or a Filipino seaman, and his spouse or dependent who is a resident in the Philippines, fifty percent (50%) of the interest income from such bank deposit shall be treated as exempt while the other fifty percent (50%) shall be subject to a final withholding tax of seven and one-half percent (7.5%).

(B) Compliance and Administrative Procedures for Non-Resident Citizen and Non-Resident Alien. The tax on interest income from foreign currency deposit shall be imposed unless the depositor who is a non-resident citizen or a non-resident alien can present documentary evidence that he is not a resident of the Philippines. Such evidence shall consist of the original or certified copy of any of the following:

> (1) an immigration visa issued by the foreign government in the country where he is a resident of; or
>
> (2) a certificate of residency which is issued by the Philippine Embassy or Consulate in the foreign country of his residence; or
>
> (3) a certificate of the contract of employment of an overseas contract worker which is duly registered with the Philippine Overseas Employment Agency (POEA); or a Seaman's Certificate, in the case of a Filipino seaman; or
>
> (4) a certification from the Bureau of Immigration of the Philippines that a non-resident alien is not a resident of the Philippines; or
>
> (5) a certification from the Department of Foreign Affairs (DFA) of the Philippines that the individual is a regular member of the diplomatic corps of a foreign government and is entitled to income tax exemption under an international agreement to which the Philippines is a signatory.

(C) Name of the Foreign Currency Bank Account — To be entitled to an exemption from the tax on interest income on foreign currency deposit, the Foreign Currency Bank Account shall be in the name of the non-resident individual or non-resident corporation. Otherwise, the interest income therefrom shall be considered as subject to the tax imposed herein.

(D) Illustration

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Mr. Juan de la Cruz, a Filipino citizen who is residing in the Philippines has a US dollar account with ABC Bank. His gross interest earnings from his bank deposit for the first quarter of 1998 (i.e. from January 1 to March 31, 1998) amounted to US$1,000.00. This gross interest earning shall be considered as constructively received by Mr. De la Cruz during the first quarter of 1998 and shall be subject to a seven and one-half percent (7.5%) final withholding tax. The 7.5% final withholding tax which is due thereon is US$75.00.

Sec. 2.27 and Sec. 2.28 — Corporate Income Tax on Interest Income from a Depository Bank under the Foreign Currency Deposit System.

(A) Interest income which is actually or constructively received by a domestic corporation or a resident foreign corporation from a foreign currency bank deposit shall be subject to a final withholding tax at the rate of seven and one-half percent (7.5%) based on the gross amount of such interest income. The depository bank shall withhold and remit the tax pursuant to the provisions of Sections 57 and 58 (withholding tax at source) of the Code.

(B) Compliance and Administrative Procedures for a Non-resident Corporation. The tax on interest income from foreign currency deposit shall be imposed unless the depositor, which is a non-resident corporation, can present documentary evidence that it is not a resident of the Philippines. Such evidence shall consist of the original or certified copy of all the following requirements:

(1) Certificate of registration of the corporation abroad; and

(2) Certification from the Securities and Exchange Commission (SEC) that the non-resident corporation is not licensed to do business in the Philippines.

(C) Taxation of Income of an FCDU or OBU from Foreign Currency Transactions- In general, income derived by an FCDU or an OBU from foreign currency transactions with residents of the Philippines, including local commercial banks, local branches of foreign banks, and other depository banks under the foreign currency deposit system, shall be subject to a final withholding tax of ten percent (10%) based on gross income pursuant to Sec. 27(D)(3) and Sec. 28(A)(4) of the Code. Income from foreign currency transactions shall include interest income from lending operations, including bank charges, commissions, service fees, and net foreign exchange transaction gains.

Income from foreign currency transactions with non-residents of the Philippines shall not be subject to income tax.

The person making the income payment shall withhold and remit the tax withheld pursuant to the provisions of Sections 57 and 58 of the Code. Thus, in the case of interest payment by a resident of the Philippines on a foreign currency loan from an OBU or an FCDU, the withholding agent shall be the said resident.

(D) Taxation of Other Incomes of an FCDU or an OBU. Income derived by an FCDU or an OBU from activities other than foreign currency transactions shall be subject to the pertinent income tax/taxes prescribed under Section 27 or Section 28 of the Code. To illustrate: Income derived by an FCDU from consultancy services and rentals shall be subject to an income tax based on net income at the tax rates prescribed under Section 27(A) of the Code. Capital gains derived from the sale, barter, exchange or disposition of shares of stocks in a domestic corporation shall be subject to tax prescribed under Section 27(D) of the Code.

The aforesaid depository bank shall file its corporate income tax return for income referred to in the preceding paragraph in accordance with the provisions of Section 52 of the Code. It shall also declare thereunder all other incomes derived during the taxable period which are subject to the final withholding taxes, the fact that such final

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withholding taxes have been withheld therefrom by the payor notwithstanding, indicating the following information:

(a) Name of the withholding agent;
(b) His/its address;
(c) His/its Taxpayer Identification Number (TIN);
(d) Period covered;
(e) Gross Income;
(f) Rate of final withholding tax applied; and
(g) Amount of final withholding tax withheld.

The submission of the foregoing information shall not be required with respect to its interest income derived from bank deposits

Sec. 2.58. Information Requirement for Depositors/Taxpayers Exempt from Withholding Tax on Interest Income from Foreign Currency Deposits —

The Depository Bank shall submit with its quarterly withholding tax remittance prescribed under Sec. 58(A) of the Code a list of all persons and corporations who were given exemption from the tax on interest income on foreign currency deposits.

To avail of the exemption from the tax on interest income from foreign currency deposit, the depositor is required to execute a written permission allowing its depository bank to inform the Commissioner of Internal Revenue that as a non-resident, the depositor is exempt from the tax. A depositor who fails to comply with this requirement, which constitutes a limited waiver of the confidentiality of foreign currency deposits, shall not be entitled to the exemption privilege.

Effectivity Clause. These Regulations shall apply on taxable income derived beginning January 1, 1998 pursuant to the provisions of Section 8 of RA 8424. In case of deposits which were made in 1997, only that portion of interest which was actually or constructively received by a depositor starting January 1, 1998 is taxable.

Transitory Provision. No penalty shall be imposed for late payment of the tax herein prescribed for the first three quarters of calendar year 1998, provided, however, that the taxpayer's corresponding tax returns for the said taxable quarters are filed and the taxes due are paid not later than October 25, 1998.

Adopted: 25 Aug. 1998

(SGD.) EDGARDO B. ESPIRITU
Secretary of Finance

RECOMMENDING APPROVAL:

(SGD.) BEETHOVEN L. RUALO
Commissioner of Internal Revenue

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