AMENDING REVENUE MEMORANDUM CIRCULAR NO. 32-99.

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Under the Exchange of Notes between the Japanese Government and the Republic of the Philippines for OECF Funded Projects undertaken in the Philippines, the following are the standard clauses pertaining to the tax treatment of participating Japanese contractors and nationals:

> "The government of the Republic of the Philippines will exempt the Fund from all fiscal levies or taxes imposed in the Republic of the Philippines on and/or in connection with the Project Loan, the Engineering Service Package Loan and the Commodity Loan as well as interest accruing therefrom."
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> "The Government of the Republic of the Philippines will, itself or through its executing agencies or instrumentalities, assume all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and: nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products and/or services to be provided under the Project Loan."

The foregoing provisions of the Exchange of Notes mean that the Japanese contractors or nationals engaged in OECF-funded projects in the Philippines shall not be required to shoulder all fiscal levies or taxes associated with the project. Instead, the taxes shall be shouldered and borne by the executing government agencies. Hence, for the comprehensive treatment of the tax implications arising therefrom, the following rulings are hereby promulgated:

A) VALUE-ADDED TAX:

1. The invoice billings of the Japanese contractors with the executing government agencies are exempt from the 8.5% creditable VAT withholding prescribed under Section 114 (C) of the National Internal Revenue Code of 1997 (then section 110(c), old NIRC) as provided for in Revenue Memorandum Circular No. 32-99. Accordingly, the executing agencies of the Philippine government shall not withhold the 8.5% creditable VAT from the said billings of the Japanese contractors.

2. The suppliers and sub-contractors of the Japanese contractors shall bill and pass on the 10% VAT to the said Japanese contractors. The Japanese contractors, in turn, shall bill and pass on the 10% VAT to the concerned executing agencies of the Philippine government. Thus, billings to the executing government agencies shall be deemed inclusive of VAT. Since, under the Exchange of Notes, the OECF Fund shall not be used to pay for the tax, then the VAT is to be paid out of the Philippine counterpart fund.

3. The Japanese contractors shall file the prescribed VAT returns on gross receipts derived from OECF-funded projects, claim their input taxes from their purchases of goods, properties and services from their suppliers or sub-contractors, and shall pay the VAT thereon, after offsetting the allowable input taxes, considering that the amount intended for payment of the VAT has already been collected and received by the Japanese contractors or nationals from the executing government agencies as part of the total invoice price.

4. In cases where the executing government agencies previously withheld any 8.5% creditable VAT from the total billings of the Japanese contractors, said creditable VAT withholding shall be deducted against the VAT due from the Japanese contractors. Furthermore, if the VAT returns of the Japanese contractors show that there are still excess VAT payments, after applying the 8.5% creditable VAT previously withheld from the VAT due, then such

excess VAT payment constitutes taxes erroneously paid and received. Pursuant to Section 204 (C) of the Tax Code of 1997, such excess tax payment shall be refunded or credited to the Japanese contractors, either in cash or Tax Credit Certificate, as the case may be, at the option of the Japanese contractors, subject to the filing of the corresponding claim with the Commissioner or with the Court of Tax Appeals within the two-year prescriptive period.

B) INCOME TAX

1. Japanese firms or nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products and/or services to be provided under the Project Loan, shall file the prescribed income tax returns. Since the executing government agencies are mandated to assume the payment thereof under the Exchange of Notes, the said Japanese firms or nationals need not pay the taxes due thereunder.

2. The concerned Revenue District Officer shall, in turn, collect the said income taxes from the concerned executing government agencies.

3. In cases where income taxes were previously paid directly by the Japanese contractors or nationals, the corresponding cash refund shall be recovered from the government executing agencies upon the presentation of proof of payment thereof by the Japanese contractors or nationals.

C) CREDITABLE EXPANDED WITHHOLDING TAX

1. The executing government agencies shall remit to the BIR the prescribed 1% creditable expanded withholding tax pursuant to the expanded withholding tax regulations, as amended by Revenue Regulations No. 2-98. However, since the executing government agencies assume payment of the income taxes due from the Japanese contractors or nationals by virtue of the agreement, the same shall not be deducted from the income payments to the Japanese contractors or nationals. Instead, the executing government agencies shall assume the payment thereof out of their own funds.

2. The executing government agencies shall furnish the Japanese contractors or nationals with the prescribed withholding tax statement showing the amount of the 1% creditable expanded withholding tax remitted to the BIR.

3. The 1% creditable expanded withholding tax remitted by the executing government agencies shall be credited or deducted by the Japanese contractors or nationals in computing the net income tax due as referred to in paragraph B hereof.

4. In case the executing government agencies withheld the 1% creditable expanded withholding tax from the Japanese contractors or nationals, instead of having assumed and paid the same out of their own funds as provided for under the Exchange of Notes, the corresponding cash refund shall be recovered by the Japanese contractors or nationals from the said executing government agencies.

Any ruling or revenue issuance which is inconsistent herewith is hereby amended, repealed or modified accordingly.

All internal revenue officers and others concerned are hereby enjoined to strictly implement the provisions of this Circular.

Adopted: 02 June 1999

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

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