

## AMENDMENTS TO REVENUE REGULATIONS NO. 6-85, AS AMENDED, OTHERWISE KNOWN AS THE EXPANDED WITHHOLDING TAX REGULATIONS

*BIR (DOF) REVENUE REGULATION NO. 12-94, June 27, 1994*

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Pursuant to the provisions of Section 245, in relation to Section 50(b), both of the National Internal Revenue Code, these regulations, amending Sections 1, 2, 4, 6, and 10 of Revenue Regulations No. 6-85, as amended, are hereby promulgated.

SECTION 1. Section 1 of Revenue Regulations No. 6-85, as amended, is hereby further amended to read as follows:

Sec. 1. Income payments subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.

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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 —

1. Real property, other than capital asset, by an individual, estate, trust, trust fund or pension fund or real property, whether held as capital or ordinary asset, by a corporation (a) not registered with the Housing and Land Use Regulatory Board (HLURB) as engaged in Socialized Housing projects under RA 7279; (b) the selling price of the house and lot or the lot only is not over P500,000.00, and (c) the seller/transferor is habitually engaged in the real estate business — one and one-half percent (1.5%);

2. Real property, other than capital asset, by an individual, estate, trust, trust fund or pension fund or real property, whether held as capital or ordinary asset, by a corporation (a) not registered with the HLURB as engaged in Socialized Housing projects under RA 7279; (b) the selling price thereof is over P500,000.00, but not over P2,000,000.00; and (c) the seller/transferor is habitually engaged in the real estate business — three percent (3%)

3. Real property, other than capital asset, by an individual, estate, trust, trust fund or pension fund or real property, whether held as capital or ordinary asset, by a corporation (a) not registered with the HLURB as engaged in Socialized Housing projects under RA 7279; (b) the selling price thereof is over P2,000,000.00, and (c) the seller/transferor is habitually engaged in the real estate business — five percent (5%)

4. Real property, other than capital asset, by an individual, estate, trust, trust fund or pension fund or real property whether held as capital or ordinary asset, by a corporation not habitually engaged in the real estate business — seven and one-half percent (7.5%).

For this purpose, the seller shall automatically be considered habitually engaged in the real estate business upon submission of a certificate of accreditation issued by the Chamber of Real Estate Builders Association, Inc. (CREBA); the National Real Estate Association (NREA); or the Subdivision and Housing Developers

Association, Inc. (SHDA). Otherwise, the seller shall submit evidence showing that he is in fact habitually engaged in the real estate business.

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(m) Certain income payments made by credit card companies. — On the gross amount paid by any credit card company in the Philippines to any business entity, whether a natural or juridical person, representing the sales of goods/services made by the aforesaid business entity to cardholders — one percent (1%);

(n) Income payments by top 5,000 corporations. — Income payments made by any of the top five thousand (5,000) corporations, as determined by the Commissioner of Internal Revenue, to their local suppliers of goods. — one percent (1%);

(o) Income payments by government. — Income payments made by a government office, national or local, including government-owned or controlled corporations, on their purchase of goods from local suppliers — one percent (1%).

In the case of a government-owned or controlled corporation which, at the same time, is listed as one of the top 5,000 corporations, it shall withhold the tax in its capacity as a government-owned or controlled corporations rather than as one of the top 5,000 corporations. Hence, only one percent of the amount paid for the purchase of goods from local suppliers shall be withheld by the subject payor.

SECTION 2. Section 2 of Revenue Regulations No. 6-85, as amended, is hereby amended to read as follows:

Sec. 2. Persons required to deduct and withhold. — The following persons are hereby constituted as withholding agents for purposes of the tax required to be withheld on income payments enumerated in the preceding section:

(a) An individual, with respect to payments made in connection with his trade or business. However, insofar as taxable sale, exchange or transfer of real property specified in Section 1(j) is concerned, individual buyers not engaged in trade or business are also constituted as withholding agents, but they need not register as such;

(b) In general, any juridical person, whether or not engaged in trade or business; and

(c) All government offices, including government-owned or controlled corporations, as well as provincial, city or municipal governments.

SECTION 3. Section 4 of Revenue Regulations No. 6-85 is hereby amended to read as follows:

Sec. 4. Exemption from Withholding. — The withholding of tax prescribed in these regulations shall not apply to income payments in the following cases:

(a) Income payments to the national government and its instrumentalities, including provincial, city or municipal governments, as well as government-owned or controlled corporations.

(b) Income payments to persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

1. Sales of real property by a corporation which is registered with and certified by the Housing and Land Use Regulatory Board (HLURB) as engaged in socialized housing projects pursuant to Republic Act No. 7279 and its implementing regulations and whereby the selling price of the house and lot or only the lot does not exceed P150,000.00 or at such adjusted amount of selling price for socialized housing as may later be determined and adapted by the HLURB, pursuant to the aforesaid law;

2. Persons enjoying exemption from payment of income taxes pursuant to the provisions of the Omnibus

Investment Code of 1987, as amended;

3. Etcetera.

(c) Exempt corporations under Section 26 of the National Internal Revenue Code, as amended, except income derived from real or personal property, or from any activity conducted for profit;

(d) In the case of a payee who suffered net operating losses during the immediately preceding two (2) tax years;

(e) In general, exemption from withholding tax shall be allowed only if the payee has furnished to the payor a copy of a Certificate of Exemption from withholding tax issued by the Commissioner of Internal Revenue. However, this rule shall not apply in cases falling under the preceding paragraphs (a) and (b)(1) of this Section.

SECTION 4. Section 6 of Revenue Regulations No. 6-85 is hereby amended to read as follows:

Sec. 6. Quarterly withholding tax statement for taxes withheld. — Every payor required to deduct and withhold expanded withholding taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax statement, using the prescribed BIR Form therefor, showing the income payments made and the amount of taxes withheld therefrom, within thirty (30) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. However, upon request by the payee, the payor must furnish such statement to the payee simultaneously with the income payment.

SECTION 5. Section 10 of the Revenue Regulations No. 6-85 is hereby amended to read as follows:

Sec. 10. Claim for Tax Credit or Refund.

(a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

(b) Excess Credits. — A taxpayer's excess expanded withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose, provided, however, he submits with his income tax return a copy of his income tax return for the aforesaid previous taxable period showing the amount of his aforementioned excess withholding tax credits.

If the taxpayer, in lieu of the aforesaid automatic application of his excess credit, wants a cash refund' or a tax credit certificate for use in payment of his other national internal tax liabilities, he shall make a written request therefor. Upon filing of his request, the taxpayer's income tax return showing the excess of expanded withholding tax credits shall be examined. The excess expanded withholding tax, if any, shall be determined and refunded/credited to the taxpayer-applicant. The refund/credit shall be made within a period of sixty (60) days from date of the taxpayer's request provided, however, that the taxpayer-applicant submitted for audit all his pertinent accounting records and that the aforesaid records established the veracity of his claim for a refund/credit of his excess expanded withholding tax credits.

SECTION 6. Implementation of the provisions of Section 1, Revenue Regulations No. 6-94, so far as it pertains to the expanded withholding tax on certain income payments to exporters (i.e., "On the gross amount paid by any bank in the Philippines to any exporter of goods/services, representing the Philippine peso value of the foreign letter of credit of payment of the aforesaid exporter's export sales") is hereby being deferred indefinitely.

SECTION 7. Effectivity. — The provisions of Revenue Regulations No. 8-94 notwithstanding, these Regulations

shall take effect fifteen days after publication in the Official Gazette or in any newspaper of general circulation, whichever shall come first.

Adopted: 27 June 1994

(SGD.) ROBERTO F. DE OCAMPO

Secretary of Finance

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