NATIONAL ADMINISTRATIVE REGISTER · JANUARY 18, 1993

ADMINISTRATIVE SETTLEMENT OF “BACK-TO-BACK” LOANS TAX CASES.

BIR REVENUE MEMORANDUM CIRCULAR NO. 12-93, January 18, 1993

Read online (full-text search, related cases, audio case brief): https://batas.org/library/f0dc3cbb1aae/

A
BACKGROUND
A tax minimizing scheme had been discovered in the audit of certain taxpayers. Under the set-up, the taxpayer negotiates a loan in a bank, turns around and invests the proceeds thereof in treasury bills and other money market instruments not necessarily in the same lending bank.

The apparent tax benefit to the borrower-investor lies in the deduction of the interest expense from gross income even as the income earned is subjected to final withholding tax - a 15% margin representing the difference between the 35% corporate income tax on the net income after deduction of interest expense and 20% final withholding tax on the interest earned.

On the ground that the interest expense is paid or accrued on non-business or non-trade indebtedness, it was entirely disallowed (Sec. 29(b), NIRC) giving rise to substantial assessments.

The assessments had been contested and are awaiting resolution. Lately, however, the affected taxpayers have evinced a desire to settle amicably their tax liabilities, if allowed to be credited the taxes withheld on the interest income. Were it not for the fact that the tax on the interest income was collected thru final withholding tax method, only the difference between the non-deductible interest expense and the taxable interest income will be subjected to tax.

B
ADMINISTRATIVE POLICY
In order to facilitate the collection of deficiency income taxes due on these contested cases, and to encourage taxpayers similarly situated to come forward and settle their cases before audit and issuance of notice of assessments, the "offer to pay" may be accepted provided that -

1. the offer to pay and actual payment is made not later than March 31, 1993;

2. the basic deficiency tax to be paid shall not be less than the difference between the tax on the disallowed interest expense and the tax withheld on the interest earned; and

3. the interest of 20% per annum shall be added to the deficiency income tax due from date the final income tax return is required to be filed up to the date of payment. No Offer or Settlement to pay deficiency income tax arising from back-to-back loan transactions shall be entertained after the lapse of the deadline herein established.

C
IMPLEMENTING MECHANISM

1. The Offer to Pay or Settle must be accomplished in duplicate by the President or Authorized Officer of the taxpayer, stating therein —

- Name and address

- Taxable year

- TIN

- Assessment notice number (if applicable)

- Amount of interest expense claimed

- Amount of interest earned

- Amount of final withholding tax on interest earned

and filed with the Asst. Commissioner (Collection Service) or his authorized officer. The Offer shall be stamped "Received" on both copies, and checked as to its accuracy with the audit report and the certificate of withholding tax verified. It shall forthwith be forwarded to Deputy Commissioner Eufracio D. Santos for approval and issuance of Authority to Accept Payment (ATAP).

2. After payment the taxpayer shall submit the "pink" copy of the ATAP to the issuing Officer to be attached to the docket together with the copy of the approved Offer. In the case of voluntary settlement prior to audit and formal assessment, the ATAP together with the approved copy of the Offer shall be filed for future reference.

D
EFFECTIVITY
These Circular shall take effect immediately upon approval, and all internal revenue officers are hereby enjoined to give it the widest publicity.

Adopted: 18 Jan. 1993

(SGD.) JOSE U. ONG
Commissioner of Internal Revenue
Annex “A”

OFFER TO SETTLE DEFICINECY
INCOME TAX

Under Revenue Memorandum Circular No. ____
For the Taxable Year: _____
(Accomplish in Duplicate)

Name

:

_____

Address

:

_____

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TIN

:

_____

Date:

_____

Assessment Notice No. (if applicable)

Income Tax on entire disallowed interest expense claimed from “back to back loans (P _____ x 35%) P _____

Less:

Final Withholding

tax on interest

earned on investment

of back to back”

loan proceeds

(P _____ x 20%)

_____

Deficiency Income Tax

_____

_____

Add:

Interest from

____ to ____

_____

Total Amount Due and Payable

P=========

_____

Taxpayer's Name & Signature

Approved/ Disapproved:

EUFRACIO D. SANTOS

Deputy Commissioner

_____

Date

Note: Please attach withholding agent's Certificate of Creditable Withholding Tax (BIR Form No. ___) showing interest earned and tax withheld.

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