

**[BIR REVENUE MEMORANDUM CIRCULAR NO. 34-
2008, April 15, 2008]**

**TAX TREATMENT OF DIRECTOR'S FEES FOR INCOME TAX AND
BUSINESS TAX PURPOSES**

It is a well settled rule that director's fees are taxable, for income tax purposes, as compensation income when the recipient/director is an employee of the corporation which pays the same. Being embraced within the term "compensation income", the director's fees are subject to the withholding tax on wages imposed under Section 79, in relation to Section 24(A), both of the National Internal Revenue Code (Code). term

The above tax treatment applies whenever it is established that the director and the corporation has an employer-employee relationship, i.e. President of a corporation sitting a member of the Board of Directors. Revenue Regulations No. 2-98 provides that "the compensation" means all remuneration for services performed by an employee for is employer under an employer-employee relationship, unless specifically excluded by the Code". Thus, fees including director's fees, if the director is, at the same time, an employee of the employer/corporation constitute compensation income (Section 2.78.1, RR No. 2-98). Accordingly, the director's fees received by employees are exempt from the value-added tax under Section 109 of the Code.

However, if these fees are paid to a director who is not an employee of the corporation paying such fees (i.e., whose duties are confined to the attendance of and participation in the meetings of the board of directors), such fees are not treated as compensation income because of the absence of employer-employee relationship, but rather, the same should squarely fall under Section 32(A)(2) of the Code under the caption "Gross income derived from the conduct of trade or business or exercise of a profession." The fees received by the director who is not an employee of the payor/corporation are subject to ten percent (10%) creditable withholding tax if his gross income for the current year do not exceed P720,000.00 or fifteen percent (15%) if his gross income exceeds P720,000.00 pursuant to Revenue Regulations No. 30-2003. These payments fall under "Professional Fees, talent fees, etc., for services rendered by individuals" which include under its purview "Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in meetings of the board of directors." (Section 2.57.2 (A) (9), RRNo. 2-98). It is also emphasized that the amount subject to the 10% or 15% creditable withholding tax is not only confined to fees, but also per diems, allowances and any other form of income payment made to the director.

Aside from being liable to the payment of the income tax imposed under Title II of the Code, these directors who are not employees, having received fees which had been subsequently reported in their annual income tax returns as part of their gross income should likewise be liable to pay business tax on account of such receipt of