

[BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2008, September 05, 2008]

CLARIFYING THE BUSINESS TAXATION ON THE ACTIVITIES UNDERTAKEN BY THE BANGKO SENTRAL NG PILIPINAS (BSP) IN PURSUANCE OF ITS MANDATES AS THE INDEPENDENT CENTRAL MONETARY AUTHORITY OF THE REPUBLIC OF THE PHILIPPINES

BACKGROUND:

This Revenue Memorandum Circular is issued to clarify the taxation of the Bangko Sentral ng Pilipinas ("BSP") with respect to activities it undertakes in pursuance of its constitutional and statutory mandates as the country's independent central monetary authority. It has been determined that these activities which BSP engages in, including Actions it undertakes, are geared towards the attainment of these mandates.

This Circular also aims to identify such activities and transactions undertaken by the BSP, which are not incompatible with its defined mandates, thereby rationalizing the imposition of applicable taxes on those activities. The functions that BSP exercises in pursuance of its mandates as independent central monetary authority are vital in the determination of the taxability of the transactions and activities on which it is engaged in.

In fine, both constitutional and statutory provisions outlining BSP's primary objective and responsibilities have been thoroughly considered in determining the status of BSP and the taxability of its activities and transactions. There is no issue that BSP was created both as regulatory agency and chartered institution.^[1] Accordingly, its activities and transactions are defined within the context of BSP's chartered activities as the independent central monetary authority and regulatory body.

SECTION 1. The Bangko Sentral ng Pilipinas: its Responsibility and Primary Objective as the Independent Central Monetary Authority.

Article XII, Section 20 of the 1987 Constitution has mandated Congress to establish an independent central monetary authority that shall be responsible in providing policy directions in the areas of money, banking, and credit. The authority shall also exercise supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Republic Act ("R.A.") No. 7653 (the "BSP Charter") was enacted reiterating these constitutional policy and objective, as well as defining the core functions of the BSP. As the central monetary authority, BSP shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities.

concerning money, banking and credit. As such, it shall provide policy direction in these areas. As a regulatory body, BSP shall exercise supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.^[2]

SECTION 2. BSP is Not a Bank nor a Non-Bank-Financial Intermediary Performing Quasi-Banking Functions. BSP is a Government Instrumentality Organized as a Chartered Institution.

Consistent with its constitutional and statutory mandates, it is evident that the BSP is not a bank. As defined under Section 3 of R.A. No. 8791 or the General Banking Law of 2000 relation to Section 22 (v) of the Tax Code, "banks" shall refer to those entities engaged lending of funds obtained from the public in the form of deposits, and are classified into universal banks, commercial banks, thrift banks (savings and mortgage banks, stock savings and loan associations, and private development banks), cooperative banks, rural banks, Islamic banks and other classifications of banks as may be determined by the Monetary Board of the BSP.

BSP cannot likewise be considered as a non-bank financial intermediary performing Quasi-banking functions. "Non-bank financial intermediaries" shall refer to persons or entities whose principal function include lending, investing or placement of funds or evidence of indebtedness or equity deposited with them, acquired by them or otherwise sourced through them either for their own account or for the account of others. The term also includes all parties regularly engaged in lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.

In view of the term "non-bank financial intermediaries", the term "quasi-banking functions" means the borrowing of funds from twenty (20) or more persons or corporate lenders at any one time, through the issuance, endorsement or acceptance of debt instruments of any kind, other than deposits, for the borrower's own account or through the issuance of certificates of assignment or similar instruments with recourse, or of repurchase agreements, for purposes of relending or purchasing receivables or other similar obligations: provided, however, that commercial, industrial and other non-financial companies, which borrow funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions. In the same manner, the term "deposit substitutes" shall refer to an alternative form of obtaining funds from the public (i.e., twenty [20] or more individual or corporate lenders at any one time), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing receivables and other obligations, or financing their own needs or the needs of their agent or dealer.

"Banking activities" refer to the functions or operations conducted to carry on the business of commercial banking, such as accepting drafts and issuing letters of credit; accounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; accepting or creating demand deposits; receiving other