

**[ BIR MEMORANDUM CIRCULAR NO. 1-98, January 02, 1998 ]**

**SALIENT FEATURES OF CERTAIN AMENDMENTS TO THE NATIONAL INTERNAL REVENUE CODE (NIRC) MADE BY R.A. NO. 8424, OTHERWISE KNOWN AS THE COMPREHENSIVE TAX REFORM ACT OF 1997**

For the information and guidance of all concerned, hereunder enumerated are some salient amendments to the National Internal Revenue Code (NIRC), which need to be implemented immediately and which were introduced by R.A. No. 8424, effective January 1, 1998:

(1) The capital gains tax on sales of real property made beginning January 1, 1998 by individuals, estates and trusts has been increased from five percent (5%) to six percent (6%), pursuant to Section 24(D), NIRC, as amended, the pertinent portion of which is quoted as follows:

*"(D) Capital Gains from Sale of Real Property —*

*"(1) In General —* The provisions of Section 39 (B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6 (E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or -controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer;

*"(2) Exception —* The provision of paragraph (1) of this Subsection to the contrary notwithstanding, capital gains presumed to have been realized from the sale or disposition of their principal residence by natural persons, the proceeds of which is fully utilized in acquiring or constructing a new principal residence within eighteen (18) calendar months from the date of sale or disposition, shall be exempt from the capital gains tax imposed under this Subsection: Provided, That the historical cost or adjusted basis of the real property sold or disposed shall be carried over to the new principal residence built or acquired: Provided, further, That the Commissioner shall have been duly notified by the taxpayer within thirty (30) days from the date of sale or disposition

through a prescribed return of his intention to avail of the tax exemption herein mentioned: Provided, still further, That the said tax exemption can only be availed of once every ten (10) years: Provided, finally, That if there is no full utilization of the proceeds of sale or disposition, the portion of the gain presumed to have been realized from the sale or disposition shall be subject to capital gains tax. For this purpose, the gross selling price or fair market value at the time of sale, whichever is higher, shall be multiplied by a fraction which the unutilized amount bears to the gross selling price in order to determine the taxable portion and the tax prescribed under paragraph (1) of this Subsection shall be imposed thereon."

(2) Sales of land and/or buildings made by domestic corporations which are not used in business and held as capital assets are subject to a new capital gains tax rate of six percent (6%) based on the selling price or fair market value thereof, whichever is higher, in lieu of the normal income tax on domestic corporations, pursuant to Section 27(D) (5), NIRC as amended by R.A. No. 8424, pertinent portion of which is quoted as follows:

*"(5) Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings — A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of this Code, whichever is higher, of such lands and/or buildings."*

(3) Net capital gain from the sale, barter, exchange or other disposition made by citizens, resident aliens, non-resident aliens (whether engaged or not engaged in business in the Philippines), domestic corporations, resident foreign corporations, and non-resident foreign corporations of shares of stock in a domestic corporation not traded in the local stock exchange, shall be subject to the following new capital gains tax rates:

Not over P 100,000 .....5% (formerly 10%)

On any amount in excess of P 100,000 ..... 10% (formerly 20%)

(4) Interest income earned from depository banks under the expanded foreign currency deposit system by citizens of the Philippines, resident aliens, domestic corporations, and resident foreign corporations (previously exempt from income tax) are now subject to a final withholding income tax at the rate of seven and a half percent (7.5%) based on gross income.

(5) Income earned by non-resident citizens, overseas contract workers, and Filipino seamen for services rendered abroad as members of the complement of a vessel engaged exclusively in international trade, are now exempt from income tax. Consequently, they shall also be exempted from withholding tax vis-a-vis their said income (e.g., Filipino seamen on board ocean-going vessels of Philippine registry engaged in international trade).