[BIR REVENUE REGULATIONS NO. 2-2010, February 18, 2010]

AMENDMENT TO SECTIONS 6 AND 7 OF REVENUE REGULATIONS NO. 16-2008 WITH RESPECT TO THE DETERMINATION OF THE OPTIONAL STANDARD DEDUCTION (OSD) OF GENERAL PROFESSIONAL PARTNERSHIPS (GPPS) AND THE PARTNERS THEREOF, AS WELL AS THE MANNER AND PERIOD FOR MAKING THE ELECTION CLAIM OSD IN THE INCOME TAX RETURNS

Section 1. Scope. Pursuant to the provisions of Sec. 244, in relation to Sec. 3 of Republic Act No. 9504 (RA 9504) amending Sec. 34(L) of the Tax Code of 1997 (Code), as amended, these Regulations are hereby promulgated to amend certain provisions of Revenue Regulations No. 16-2008 to further clarify the manner of claiming the OSD by General Professional Partnerships and the partners comprising them and the manner of manifesting the election to use OSD for the taxable year concerned by all taxpayers entitled to it.

Section 2. Sec. 6 of Revenue Regulations No. 16-2008 is hereby amended to read as follows:

> "Sec. 6. DETERMINATION OF THE OPTIONAL STANDARD DEDUCTION FOR GENERAL PROFESSIONAL PARTNERSHIPS (GPPs) AND PARTNERS OF GPPs. – Pursuant to Sec. 26 of the Code, a GPP is not subject to income tax imposed under Title II thereof. However, the partners shall be liable to pay income tax on their separate and individual capacities for their respective distributive share in the net income of the GPP.
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> Sec. 26 of the Code likewise provides that *"For purposes of computing the distributive share of the partners, the net income of the GPP shall be computed in the same manner as a corporation."* As such, a GPP may claim either the itemized deductions allowed under Section 34(A) to (J) of the Code or in lieu thereof, it can opt to avail of the OSD allowed to corporations in claiming the deductions in an amount not exceeding forty percent (40%) of its gross income. The net income determined by either claiming the itemized deduction or OSD from the GPP's gross income, is the distributable net income from which the share of each partner is to be determined. Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership.
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> The GPP is not a taxable entity for income tax purposes since it is only acting as a *"pass-through"* entity where its income is ultimately taxed to the partners comprising it. In computing taxable income defined under Section 31 of the Code, all expenses which are ordinary and necessary, incurred or paid for the practice of profession, are allowed as deductions.

Since the taxable income is in the hands of the partner, as a rule apart from the expenses claimed by the GPP in determining its net income, the individual partner can still claim deductions incurred or paid by him that contributed to the earning of the income taxable to him. The following rules shall govern the claim of the partners of deductions from their share in the net income of the partnership, viz:

1. If the GPP availed of the itemized deduction in computing its net income, the partners may still claim itemized deductions from said share, *provided, that,* in claiming itemized deductions, the partner is precluded from claiming the same expenses already claimed by the GPP. In fine, if the GPP claimed itemized deductions the partners comprising it can only claim itemized deductions, which are in the nature of ordinary and necessary expenses for the practice of profession which were not claimed by the GPP in computing its net income or distributable net income during the year. Examples of these are representation expenses incurred by the partner where the covering invoice or receipt is issued in his name; traveling expenses while away from home, which were not liquidated by the partnership; depreciation of a car used in the practice of profession where said car is registered in the name of the partner; and similar expenses.

Hence, if the GPP availed of itemized deductions, the partners are not allowed to claim the OSD from their share in the net income because the OSD is a proxy for all the items of deductions allowed in arriving at taxable income. This means that the OSD is in lieu of the items of deductions claimed by the GPP and the items of deduction claimed by the partners.

2. If the GPP avails of OSD in computing its net income, the partners comprising it can no longer claim further deduction from their share in the said net income for the following reasons:

> i. The partners' distributive share in the GPP is treated as his gross income not his gross sales/receipts and the 40% OSD allowed to individuals is specifically mandated to be deducted not from his gross income but from his gross sales/receipts; and,
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> ii. The OSD being in lieu of the itemized deductions allowed in computing taxable income as defined under Section 31 of the Tax Code, it will answer for both the items of deduction allowed to the GPP and its partners.

3. Since one-layer of income tax is imposed on the income of the GPP and the individual partners where the law had placed the statutory incidence of the tax in the hands of the latter, the type of deduction chosen by the GPP must be the same type of deduction that can be availed of by the partners. Accordingly, if the GPP claims itemized deductions, all items of deduction allowed under Section 34 can be claimed both at the level of the GPP and at the level of the partner in order to determine the taxable income. On the other hand, should the