

[**BIR REVENUE REGULATIONS NO. 30-2003,
November 12, 2003**]

AMENDING FURTHER PERTINENT PROVISIONS OF REVENUE REGULATIONS NO. 2-98, AS LAST AMENDED BY REVENUE REGULATIONS NO. 17-2003, AND REVENUE REGULATIONS NO. 8-98, AS AMENDED, PROVIDING FOR THE IMPOSITION OF FINAL WITHHOLDING TAX ON THE SALE, EXCHANGE OR OTHER DISPOSITION OF REAL PROPERTY CLASSIFIED AS CAPITAL ASSETS BY NON-RESIDENT ALIENS, INCREASING THE WITHHOLDING TAX RATES ON CERTAIN INCOME PAYMENTS, INCLUSION OF CERTAIN INCOME PAYMENTS, SANCTIONS TO BE IMPOSED ON PAYEES WHO REFUSE THE WITHHOLDING OF TAX ON THEIR INCOME/RECEIPTS, AND FOR OTHER PURPOSES

SECTION 1. SCOPE. - Pursuant to the provisions of Section 244, in relation to Sections 57(A) and (B) of the Tax Code of 1997, these regulations are hereby promulgated to further amend portions of Revenue Regulations Nos. 2-98, as last amended by Revenue Regulations No. 17-2003, and 8-98, as amended, providing for withholding as a mode of remitting final capital gains tax on the sale of real property classified as capital assets by non-resident aliens, increasing the withholding tax rates on certain income payments, inclusion of non-food products in the coverage of expanded withholding tax, providing sanctions to payees who refuse the withholding of tax on their income/receipts, and for other purposes.

SECTION 2. INCOME PAYMENTS SUBJECT TO FINAL WITHHOLDING TAX. - Sec. 2.57.1 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

"Sec. 2.57.1. Income Payments Subject to Final Withholding Tax.

- The following forms of income shall be subject to final withholding tax at the rates herein specified.

(A) INCOME PAYMENTS TO A CITIZEN OR TO A RESIDENT ALIEN INDIVIDUAL.

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(B) Income Payment to Non-resident Aliens Engaged in Trade or Business in the Philippines.

- The following forms of income derived from sources within the Philippines shall be subject to final withholding tax in the hands of a non-resident alien individual engaged in trade or business within the Philippines, based on the gross amount thereof and at the rates prescribed therefor:

(3) On 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 based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code (i.e. the authority of the Commissioner to prescribe zonal values), whichever is higher - Six percent (6%).

In case of sale on installment of real property classified as capital asset, the procedures stated under Sec. 2.57.2(J) hereof on the sale of real property classified as ordinary asset shall apply with the exception that the withholding tax on the former shall be final whereas that on the latter shall be creditable.

In case of dispositions of real property classified as capital asset by individuals to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations, the tax to be imposed shall be determined either under Sec. 24(A) of the Code for the normal rate of income tax for individual citizens or residents or under Sec. 24(D)(1) of the Code for the final tax on the presumed capital gains from sale of property at six percent (6%) at the option of the taxpayer-seller.

(C) Income Derived from All Sources Within the Philippines by a Non-resident Alien Individual Not Engaged in Trade or Business Within the Philippines. - The following forms of income derived from all sources within the Philippines shall be subject to a final withholding tax in the hands of a non-resident alien individual not engaged in trade or business within the Philippines based on the following amounts and at the rates prescribed therefor:

(2) On 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 based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code (i.e. the authority of the Commissioner to prescribe the real property values), whichever is higher - Six percent (6%).

In case of sale on installment of real property classified as capital asset, the procedures stated under Sec. 2.57.2(J) hereof on the sale of real property classified as ordinary asset shall apply with the exception that the withholding tax on the former shall be final whereas that on the latter shall be creditable.

In case of dispositions of real property classified as capital asset by

individuals to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations, the tax to be imposed shall be determined either under Section 24(A) of the Code for the normal rate of income tax for individual citizens or residents or under Section 24(D)(1) of the Code for the final tax on the presumed capital gains from sale of property at six percent (6%) at the option of the taxpayer-seller.

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SECTION 3. INCOME PAYMENTS SUBJECT TO CREDITABLE WITHHOLDING TAX. - Sec. 2.57.2 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

"Sec.2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. - xxx xxx

(A) Professional fees, talent fees, etc., for services rendered by individuals. - On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals - Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;

1. Those individually engaged in the practice of professions or callings; lawyers; certified public accountants; doctors of medicine; architects; civil, electrical, chemical, mechanical, structural, industrial, mining, sanitary, metallurgical and geodetic engineers; marine surveyors; doctors of veterinary science; dentist; professional appraisers; connoisseurs of tobacco; actuaries; interior decorators, designers and all other profession requiring government licensure examinations and/or regulated by the Professional Regulations Commission, Supreme Court, etc.
2. Professional entertainers, such as, but not limited to, actors and actresses, singers, lyricist, composers and emcees;
3. Professional athletes, including basketball players, pelotaris and jockeys;
4. All directors and producers involved in movies, stage, radio, television and musical productions;
5. Insurance agents and insurance adjusters;
6. Management and technical consultants;
7. Bookkeeping agents and agencies;
8. Other recipient of talent fees;
9. Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors.

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Furthermore, in order to determine the applicable tax rate (10% or 15%) to be applied/withheld by the withholding agent, every individual professional/talent/corporate directors herein enumerated, shall periodically disclose his gross income for the current year to the Bureau of Internal Revenue (BIR) by submitting a notarized sworn declaration attached as Annex "A" hereof in three (3) copies two (2) copies for the BIR and one (1) copy for the taxpayer, copy furnished all the current payors of the declaration duly stamped received by the BIR (Collection Division of the Regional Office having jurisdiction over the place where the income earner is registered/ Large Taxpayers Collection Division for large taxpayers in Metro Manila/ LTDO for large taxpayers outside Metro-Manila). Sworn declaration may likewise be filed by the income payor on behalf of the professionals/talents/directors whose services were being rendered exclusively to the aforesaid payor. The disclosure should be filed on June 30 of each year or within fifteen (15) days after the end of the month the professional/talent/director's income reaches P720,000, whichever comes earlier. In case his total gross income is less than P720,000 as of June 30, he/she shall submit a second disclosure within fifteen (15) days after the end of the month that his/her gross income for the current year to date reaches P720,000. The payee - professional/talent/director shall furnish each payor a copy of the BIR duly stamped received sworn declaration not later than five (5) days from the date of receipt by the BIR. In case of failure to submit the June 30 annual declaration/disclosure to the BIR, and to furnish the payor/s a copy thereof, the payor shall withhold the tax at the rate of 15%.

The Collection Division/Large Taxpayers Collection Division/LTDO shall transmit one (1) copy of the duly submitted notarized sworn declaration, to the Withholding Tax Division within five (5) days from receipt thereof. The remaining copy shall be the file copy of the concerned Regional Office/Large Taxpayer Service/LTDO for monitoring purposes.

These requirements shall likewise apply to taxable juridical persons (sworn declaration shall be executed by the president/managing partner of the corporation/company), partners of general professional partnerships and medical practitioners stated under sub-sections (B), (H) and (I) hereof.

Notwithstanding the foregoing, if an individual recipient receives professional fees/talent fees/directors fees in addition to salaries from the same payor, the said fees shall be considered as supplemental compensation and, thus be subject to the withholding tax on compensation.

(B) Professional fees, talent fees, etc., for services of taxable juridical persons. - On the gross professional, promotional and talent fees, or any other form of remuneration enumerated in the preceding subparagraph for the services of taxable juridical persons - Fifteen percent (15%), if the gross income for the current year exceeds