

**[BIR REVENUE MEMORANDUM ORDER NO. 9-93,
October 15, 1993]**

**PRESCRIBING THE GUIDELINES AND PROCEDURES IN THE
PROCESSING OF CLAIMS FOR TAX CREDIT OR REFUND OF THE
THEN 15%, NOW 20% FINAL INCOME TAX WITHHELD FROM
INTEREST INCOME/YIELD FROM DEPOSIT SUBSTITUTE
INSTRUMENTS AND INTEREST INCOME FROM PHILIPPINE
CURRENCY BANK DEPOSITS OF EMPLOYEES' TRUST/TRUSTEED
PRIVATE EMPLOYEES RETIREMENT PLANS.**

I

Scope and Objectives

In the case of Commissioner of Internal Revenue vs. The Hon. Court of Appeals, the Court of Tax Appeals, and the GCL Retirement Plan represented by its Trustee-Director, G.R. No. 95022, promulgated March 23, 1992, the Supreme Court ruled that GCL Retirement Plan, an employees' trust maintained by the employer, GCL Inc., is exempt from the 15% (now 20%, effective August 1, 1986) final withholding tax on interest income from money market placements and purchase of treasury bills. Because of the adverse decision of the court, it is anticipated that numerous claims for tax credit/refund of said tax would be filed with the Bureau of Internal Revenue (BIR).

In order, therefore, to have an expeditious and uniform system of processing written claims for refund or tax credit of the 20% final withholding tax imposed under Section 21(c)(1) in relation to Section 50(a), both of the Tax Code on interest income from Philippine currency bank deposits and on yield or any other monetary benefits from deposit substitutes, trust funds and similar arrangements which were paid to and received only by BIR - approved trustee private employees' retirement benefit plans or employees' trusts, the following guidelines are hereby prescribed:

II

Who are entitled to the Refund or Tax Credit

Only a BIR-approved employees' trust/trusteed private employees' retirement benefit Plan duly registered with or accredited by the BIR as a reasonable private benefit plan as envisaged by Republic Act No. 4917, now Section 28(b)(7)(A) of the Tax Code as amended, shall be entitled to exemption from, and consequently, to the refund or tax credit of the 20% final withholding tax on interest income from Philippine currency bank deposits and on yield or any other monetary benefit from deposit substitutes, trust funds and similar arrangements.

On the other hand, income or earnings from investments of non-trusteed/insured plans are subject to income tax. Hence, Deferred Annuity/Deposit administration funds shall remain subject to the 20% final withholding tax on interest income from

Philippine currency bank deposits, and on yield/interest income from deposit substitutes, such as, money market placements, treasury bills, etc.

For purposes of this Order, a trustee private employees' retirement plan is a BIR-approved reasonable retirement benefit plan for employees of private employers, whether individual or corporate, within the contemplation of Republic Act No. 4917 (now Section 28(b)(7) (A) of the Tax Code) as amplified by Revenue Regulations No. 1-68 as amended by Revenue Regulations No. 1-83, the employees' retirement trust fund of which is administered by a trustee in accordance with a Trust Indenture executed by and between the employer as trustor and the trustee or trustees of the employees' retirement trust fund, duly signed by the parties to the trust and acceptance by the trustees indicated therein. In case of a corporate trustee, same must be a domestic corporation authorized to perform trust functions and transact business as a trust corporation under Republic Act No. 337, otherwise known as the "General Banking Act", as amended.

Other employees' trust funds adverted to in this Order shall refer to the trust funds of employees other than those of private employers/companies, the tax exempt qualification of which had been determined/adjudicated by the BIR under then Section 56(b) (now Section 53(b)) of the Tax Code and not under R.A. 4917 or Section 28(b)(7)(A) of the Tax Code, e.g., PNB Provident Fund, CB Provident Fund, Land Bank of the Philippines Provident Fund, GSIS Provident Fund, NPC Employees' Savings & Welfare Plan, NHA Provident Fund, etc.

On the other hand, an insured plan established and maintained by an employer under a Deposit Administration Contract or Deferred Annuity Contract, as the case may be, executed by and between the employer as the insured or policyholder and an Insurance Company as the insurer is a non-trusteed plan. A non-trusteed annuity plan is evidenced only by the aforementioned contracts with an Insurance Company. Insurance companies under Philippine laws are insurers and are not authorized to perform trust functions.

III

Documentation/Substantiation Requirements

Claims for refund or tax credit of the 20% final withholding tax on interest income from Philippine currency bank deposits, and on yield/monetary benefit from deposit substitutes, e.g. money market placements, treasury bills, etc., trust fund and similar arrangements of trustee private retirement Plans/employees' trust (as defined in paragraph II above) which was deducted and remitted to the government, should be filed in writing by the trustee/duly authorized trust manager of the fund with the Commissioner of Internal Revenue, Attn.: Appellate Division, National Office Building, BIR, Diliman, Quezon City within two (2) years from the date of payment of said tax, together with the following documents/papers:

a. Written waiver of the confidentiality of bank deposits under RA 1405 (Annex "A") duly signed by the trust-claimant's trustee/duly authorized trust manager authorizing the Commissioner of Internal Revenue or his duly authorized representative/assigned revenue officer to conduct the necessary verifications relative to his claim for tax credit/refund. A separate waiver should be executed by the claimant for each deposit account maintained with each bank;