REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

January 25, 2006

REVENUE MEMORANDUM CIRCULAR NO. 9-2006

SUBJECT : Clarifying the Amount Subject to VAT and Expanded Withholding Tax (Income Tax) of Brokers and Others Similarly Situated and the Other Parties with Whom They Transact Business

TO : All Internal Revenue Officers and Others Concerned

I. BACKGROUND

It has been a common business practice in the brokerage industry to incur reimbursable expenses and/or to advance payments, on behalf of customers (hereinafter referred to as "Customers"), to answer for certain expenses such as arrastre, wharfage, documentation, trucking, handling charges, storage fees, duties and taxes, etc. Accordingly, in billing Customers for their services, the brokers include in the said billing the foregoing reimbursable expenses and/or the advance payments made relative thereto, previously recorded as RECEIVABLE FOR CASH ADVANCES ON BEHALF OF CUSTOMERS. However, treatment for tax purposes by the payor (broker) of the aforementioned advanced payments or reimbursable expenses on behalf of a customer may differ depending upon the procedures in receipting or issuing Receipt on said advanced payments/reimbursable expenses by both the third-party service provider and the broker.

II. TRANSACTIONS AND AMOUNTS THAT ARE SUBJECT TO VAT

If the reimbursable expenses and/or advanced payments for certain expenses (e.g., arrastre, wharfage, documentation, trucking, handling charges, storage fees, duties and taxes, etc.) made by brokers on behalf of their Customers are receipted with the brokers' VAT official receipt, the same shall be subject to 10% VAT.

In the same manner, if the said reimbursable expenses and/or advanced payments are lumped/billed together with the brokerage fees in one VAT official receipt issued by the brokers to their Customers, regardless of whether such reimbursable expenses and/or

advanced payments have been specifically broken down or itemized in the brokers VAT official receipt, the same shall be subject to 10% VAT.

Likewise, any advanced payment for expenses incurred (e.g., transportation, overtime and facilitation fee to facilitate the clearing of goods through customs) for the benefit of brokers shall form part of their gross receipts and shall be subject to 10% VAT notwithstanding that the same is reimbursed by their Customers.

If, however, the said reimbursable expenses and/or advanced payments by the broker on behalf of customers are receipted directly in the name of the Customers by the person performing such service (i.e., third-party service provider) and the subsequent claim by the broker for reimbursement from the customer is covered by the broker's Non-VAT **Official Acknowledgment Receipt** acknowledging the collection of the previously recorded account "RECEIVABLE FOR CASH ADVANCES ON BEHALF OF CUSTOMERS" with no mention of quantity and description of the services rendered but just the value thereof and the name of the third-party service provider that rendered the service, the same shall not form part of the gross receipts of the broker and therefore, **shall not be subject to VAT on the part of the broker.** As a matter of course, said acknowledgement receipt is to be forwarded to the customer together with the attached official receipt issued by the third-party service provider in the name of the customer.

In sum, reimbursable expenses and/or advanced payments shall not be subject to VAT on the part of the broker if the following conditions/procedures are complied with:

1. The reimbursable expenses and/or advanced payments, except those incurred for the benefit of the brokers, are receipted separately using NON-VAT Official Acknowledgement Receipts to be issued by the brokers to the Customers upon collection of the reimbursements or advances previously recorded as RECEIVABLE FOR CASH ADVANCES ON BEHALF OF CUSTOMERS, which recording was done upon payment, on behalf of customers, of the advances to the third-party service providers who issued official receipts in the name of the customers and not of the brokers;

2. The third-party service providers to whom the advanced payments or reimbursable expenses of the customers have been paid by the brokers, shall issue receipts in the name of the Customers;

3. The brokers shall record the reimbursable expenses of or the advanced payments on behalf of Customers under the account "RECEIVABLE FOR CASH ADVANCES ON BEHALF OF CUSTOMERS"; and

4. For liquidation purposes, the brokers shall attach the original copy of all said official receipts issued by the third-party service providers in the name of the customers to the NON-VAT official acknowledgement

receipts of the brokers issued to their Customers upon payment by the latter of the reimbursable expenses.

Accordingly, while, in the foregoing scenario, the brokers shall not be liable for any output tax on the collection of the reimbursable expenses or advanced payments on behalf of their Customers, said Customers, however, may be able to claim input tax for the services of the third-party service providers that are subject to VAT if the same are receipted by the third-party service providers' VAT official receipts evidencing the latter's reporting of the same for VAT purposes.

III. TRANSACTIONS AND AMOUNTS THAT ARE SUBJECT TO EXPANDED WITHHOLDING TAX

As a rule, "all income payments which are required to be subjected to withholding of income tax shall be subject to the corresponding withholding tax rate to be withheld by the person having control over the payment **and who, at the same time, claims the expenses**." (Section 5, Revenue Regulations (RR) No. 30-03).

However, it has been observed that while the brokers, as agents of their Customers (importers/exporters), have control over payment of the reimbursable expenses and/or advanced payments, they do not claim the same as their own expenses. Thus, considering the peculiarity of the said situation, the Customers who are ultimately claiming the same as their own expenses shall be the ones primarily responsible for remitting the withholding taxes due thereon although the issuance of the corresponding Certificates of Taxes Withheld (BIR Form No. 2307) shall be the responsibility of the brokers who should issue the same, on behalf of the Customers as payors, in the name of or to the Third-party Service Providers as payees upon payment by the brokers to the said third-party service providers of the reimbursable expenses, net of the Expanded Withholding Tax. In other words, upon making the payments to the third-party service providers (the persons to whom the advance payments have been made by the brokers), the brokers shall pay or advance the prescribed amount net of the required expanded withholding tax (EWT), which net amount is the amount that should be requested for reimbursement from the Customers while the retained amount pertaining to the Expanded Withholding Tax shall be remitted to the BIR by the said Customers. The Certificate of Tax Withheld (BIR Form No. 2307) shall reflect the name of the Customer as the payor of the billed income payment, the name of the broker as the agent of the real payor who is the Customer, and the name of the third-party service provider as the payee of the billed income payment.

To ensure, however, that the proper taxes are deducted and withheld from such payments to third-party service providers, the following conditions/procedures must be complied with, to wit:

1. It shall be the responsibility of the brokers to instruct the third-party service providers to issue the official receipts directly in the name of Customers of the brokers;

2. Upon making the payments to the third–party service providers, the brokers shall compute and deduct the EWT due on the said payments. At the same time, the broker shall issue the Certificate of Tax Withheld (BIR Form No. 2307) for the deducted amount of EWT, which Certificate shall reflect the name of the third-party service provider as the payee of the income payment, the name of the Customer as the real payor of the income payment with parenthetical mention of the name of the broker as agent of the Customer, the amount of income payment, the amount of EWT, the nature and description of the income payment, the covered period and such other information as required under existing rules and regulations. At this point in time, the third-party service provider shall forward to the broker the third-party service provider's official receipt issued to the Customer reflecting therein the name of the third party service provider as the issuer of the official receipt, the name of the Customer as the buyer of the service, the nature and description of the transaction, the volume of the transaction, the price of the transaction, the VAT passed on and billed separately, if any, the EWT deducted by the agent of the payor, the net amount paid and such other information as are required under existing rules and regulations.

3. In the subsequent claim for reimbursement of the said payments, the broker shall demand from the Customers only the amount actually paid to the third-party service providers (which is already net of the EWT) with instructions to said Customers to remit to the BIR the amount of EWT on the said payments;

4. The brokers shall attach to their NON-VAT Official Acknowledgement Receipts (reflecting the amount being reimbursed) the original copy of the official receipts issued by the third-party service providers in the name of the Customers of the brokers; and

5. The time for withholding of the taxes due on said payments to third-party service providers shall be governed by the provisions of the prevailing law and regulations on withholding of the tax on income payments reckoned from the time the reimbursement is claimed from the customers by the brokers.

With respect to the reimbursement to the brokers by their Customers of the reimbursable expenses and/or advanced payments of the formers in favor of the latters following the prescribed procedures, the same shall no longer be subject to EWT since these payments do not form part of the gross receipts of the brokers. They merely collect what they have advanced on behalf of their Customers and hence, they do not derive any income from collecting such advances.

However, for reimbursable expenses and/or advanced payments of expenses redounding to the benefit of the brokers, and all other reimbursable expenses covered by VAT official receipts of the brokers, the same shall, upon reimbursement by the customers, form part of the brokers' gross receipts and shall therefore be subject to EWT notwithstanding that such reimbursements are for payments of reimbursable expenses and/or advanced payments made by the brokers on behalf of their Customers.

All internal revenue officials and others concerned are hereby enjoined to give this Revenue Memorandum Circular the widest publicity possible.

(Original Signed)
JOSE MARIO C. BUÑAG
Commissioner of Internal Revenue

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