REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

3:45 P.M.

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RECORDS MGT. DIVISION
2:36 P.M.
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December 8, 2016

REVENUE MEMORANDUM CIRCULAR NO. 130-2016

SUBJECT : **Clarification on the Tax Treatment and Appropriate Withholding Taxes on Income Payments by Departments and Agencies of the Government, Including Government-Owned And/ Or - Controlled Corporations And Government Financial Institutions to Individuals Engaged under a Job Order or Contract of Service Arrangement**

TO : **All Internal Revenue Officials, Employees and Others Concerned**

This Circular is issued to clarify the withholding taxes imposed on income payments by departments and agencies of the government, including government owned and/or -controlled corporations and government financial institutions (GFIs) to individuals whose services are engaged under a contract of service or job order arrangement.

BACKGROUND

Several agencies of the National Government have been hiring personnel on a job-order basis or contract of services pursuant to Executive Order (EO) No. 782 [1] or EO No. 366[2] and its Implementing Rules and Regulations and in accordance with DBM Circular No. 2012-20 dated December 18, 2010.

A common issue arises on the appropriate rate of withholding tax that will be imposed on the payment for services rendered by these individuals hired by National Government Agencies (NGAs). There is, thus, a need to clarify the taxation of remuneration and income payments to personnel under job order or contract of services in order to have a consistent application in all government offices and agencies that are similarly situated.

The employment of such personnel requires the execution of any one of the following: a contract of services or memorandum of agreement (MOA) or job order between the

[1] Dated February 10, 2009, Instituting Measures To Assist Workers Affected By The Global Financial Crisis And Temporary Filling Up Of Vacant Positions In The Government

[2] Dated October 4, 2004, Directing A Strategic Review Of The Operations And Organizations Of The Executive Branch And Providing Options And Incentives For Government Employees Who May Be Affected By The Rationalization Of The Functions And Agencies Of The Executive Branch

government agency concerned and the individual, in accordance with the rules and regulations of the COA.

CLARIFICATIONS

It is settled that under existing policies and guidelines of the Civil Service Commission (CSC), defining the terms "*Individual Contract of Services/Job Order*" and clarifying the terms "*Contract of Service*" and "*Job Order*", there is no employer-employee relationship created under either a job order or contract for service, and that services rendered pursuant thereto shall not be considered as government service. (CSC Circular No. 17-02 dated June 24,2002; CSC Resolution No. 02-0790 dated June 22,2002; CSC Resolution No. 021480 dated November 12,2002). Given this framework , the following clarifications are necessary for the tax treatment of remuneration/fees received by personnel under a job order or contract for service:

1) Professionals Hired Under Contract For Services Or Job Order

A. Creditable Withholding Tax under Section 2.57.2(A) of Revenue Regulations (RR) No. 2-98, as amended.

In general, individuals who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.[3]

For professionals who are paid for the services they render, they are subject to a withholding tax rate of 10% or 15%, whichever is applicable, on their gross professional fee per Section 2.57.2(A) of RR No. 2-98, as amended.

> "SECTION 2.57.2. Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> (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;

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[3] Section 2.78.3 of RR 2-98 as amended.

(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; and 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."

XXX XXX XXX

The amount subject to withholding tax under this paragraph shall include not only fees, but also per diems, allowances and **any other form of income payments not subject to withholding tax on compensation.** *(Emphasis supplied)*

2) *Non-Professionals Hired Under Contract For Services Or Job Order*

A. Income Tax: No creditable withholding tax

Income payments to individuals who are not professionals under a contract for service or job order basis shall be not subject to creditable withholding tax rates provided by Section 2.57.2 of RR No. 2-98, as amended. However, such income payments shall be

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reported as income subject to income tax under Section 24 of the Tax Code of 1997, as amended, in relation to Section 51 of the same Tax Code.

3) Tax Treatment Common to Professionals and Non-Professionals Hired Under Contract for Services or Job Order Basis

A. Value Added Tax (VAT)/Percentage Tax

The performance of services by the job-order personnel pursuant to EO 782 or EO No. 366 is not under an "employer-employee relationship" hence, it is a sale or performance of service which is within the ambit of Section 108 of the 1997 Tax Code, as amended, to wit:

> "Section 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —
>
> (A) Rate and Base of Tax.—
> (i)...xxx
> (ii)..xxx
>
> The phrase *"sale of or exchange of services"* means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; ...xxx"

Section 109(1)(W)[4], however, exempts from VAT the annual gross receipts of the subject personnel if the same do not exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00):

> "SEC. 109. Exempt Transactions. — (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> XXX XXX XXX
>
> (V) Sale or lease of goods or properties or the **performance of services** other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P 1,919,500.00); Provided, every three (3) years thereafter, the amount shall be adjusted to its present value using the Consumer Price Index, as published by the NSO;

[4] As amended by RR 016-2011

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Provided, further, that such adjustment shall be published through revenue regulations to be issued not later than March 31 of each year;

For purposes of the threshold of P 1,919,500.00, the husband and the wife shall be considered separate taxpayers. However, the aggregation rule for each taxpayer shall apply. For instance, if a professional, aside from the practice of his profession, also derives revenue from other lines of business which are otherwise subject to VAT, the same shall be combined for purposes of determining whether the threshold has been exceeded. Thus, the VAT-exempt sales shall not be included in determining the threshold.

Section 116 of the same Tax Code nevertheless subjects them to the Three Percent (3%) percentage tax, to wit:

"Section 116. Tax on Persons Exempt from Value-Added Tax. — Any person whose sales or receipts are exempt under **Section 109 (1)(W)** of this Code from the payment of value-added tax and who is not a VAT-registered person shall pay tax equivalent to three percent (3%) of his gross quarterly sales or receipts:.. .xxx"

RR 016-11[5] further amending RR 16-2005 provides:

"SECTION 3. VAT Exempt Transactions. - Section 4.109.1(B)(1)(e)(1), (p)(4), (q) and (v) of Revenue Regulations No. 16-2005, as amended, is hereby further amended to read as follows:

"(e) Services subject to percentage tax under Title V of the Tax Code, as enumerated below:

(1) Sale or lease of goods or properties or the performance of services of non-VAT-registered persons, other than the transactions mentioned in paragraphs (A) to (U) of Sec. 109(1) of the Tax Code, the gross annual sales and/or receipts of which does not exceed the amount of One Million Nine Hundred

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[5] Increasing the Amount of Threshold Amounts for Sale of Residential Lot, Sale of House and Lot, Lease of Residential Unit and Sale or Lease of Goods or Properties or Performance of Services Covered by Section 109 (P), (Q) and (V) of the Tax Code of 1997, as Amended, Thereby Amending Certain Provisions of Revenue Regulations No. 16-2005, as Amended Otherwise Known as Consolidated VAT Regulations of 2005

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Nineteen Thousand Five Hundred Pesos (P 1,919,500.00); Provided, That every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index, as published by the National Statistics Office (NSC)) (Sec. 116 of the Tax Code); Provided, further, that such adjustment shall be published through revenue regulations to be issued not later than March 3 1 of each year,"

B. Withholding Percentage Tax

As to the applicable withholding tax rate, Section 5.116 of RR No. 2-98, as amended, requires the withholding of percentage tax, thus:

"Sec. 5.116. Withholding of Percentage Tax. —

Bureaus, offices and instrumentalities of the government, including government-owned or controlled corporations as well as their subsidiaries, provinces, cities and municipalities making any money payment to private individuals, corporations, partnerships and/or associations are required to deduct and withhold the percentage taxes due from the payees on account of such money payments.

(A) Internal revenue taxes required to be withheld. —
Percentage taxes on gross money payments to the following shall be subjected to withholding at the rates herein prescribed:

(1) Persons Exempt from Value-Added Tax (VAT).— On gross payments to persons who are exempt under 109(z) **[now Sec. 109(1)(W)]** of the Code from payment of value added tax and who is not a VAT registered person except payment to cooperatives. — three percent (3%).

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All other issuances inconsistent herewith are hereby repealed or modified accordingly.

All concerned are hereby enjoined to be guided accordingly and to give this Circular as wide publicity as possible.

This Circular takes effect immediately.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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