**REPUBLIC OF THE PHILIPPINES**
**DEPARTMENT OF FINANCE**
**BUREAU OF INTERNAL REVENUE**
Quezon City

December 7, 2005

**REVENUE MEMORANDUM CIRCULAR NO. 70-2005**

**Subject** : Guidelines in the Implementation of the Enhanced Voluntary Assessment Program (EVAP) for Taxable Year 2004 and Prior Years Under Certain Conditions Pursuant to Revenue Regulations No.18-2005

**To** : All Internal Revenue Officials and Employees and Others Concerned

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Hereunder are the guidelines in the form of basic questions and answers regarding the EVAP.

**Q1. What is the coverage of the program?**

A1. The privilege of last priority in audit and investigation herein granted shall apply to all internal revenue taxes covering the taxable year ending December 31, 2004 and all prior years, including one-time transactions estate tax, donor's tax, capital gains tax, expanded withholding tax and documentary stamp tax on the transfer, sale, exchange, or disposition of assets. The EVAP can be availed of on a per tax type basis.

**Q2. Does the EVAP cover taxpayers on a fiscal year basis? Can a taxpayer whose taxable year 2004 is from July 1, 2004 to June 30,2005 avail of the EVAP?**

A2. Fiscal year taxpayers may avail of the EVAP provided that their taxable year ends on any day not later than December 31, 2004. Fiscal years ending prior to 2004 are likewise covered. It is explicitly stated in Section 1 of Revenue Regulations 18-2005 that the coverage of the EVAP shall be for taxable year ending December 31, 2004 and all prior years.

**Q3. Can the application be filed on a quarterly basis within the covered taxable years?**

A3. No, availment is per tax type and per taxable year, except for one time transactions involving the sale, transfer, exchange or disposition of assets, where the transaction dates are within taxable year ending December 31, 2004 and prior years.

**Q4. Who can avail of the EVAP?**

A4. Any person, natural or juridical, including estates and trusts, liable to pay any of the above-cited internal revenue taxes for the above specified period/s who, due to inadvertence or otherwise, erroneously paid his/its internal revenue tax liabilities or failed to file tax returns/pay taxes may avail of the EVAP, except those falling under the instances in Section 1 of Revenue Regulations No. 18-2005. The program shall likewise cover taxpayers enjoying preferential tax treatment.

**Q5. Who are disqualified to avail of the program?**

A5. The following are the exceptions to the program as mentioned in the regulations:

a. Those taxpayers who have already been issued a Final Assessment Notice (FAN) on or before the effectivity of these regulations with respect to the internal revenue taxes applicable to the taxable period(s) covered by the FAN;
b. Persons under investigation as a result of verified information filed by a Tax Informer under Section 282 of the NIRC, duly processed and recorded in the BIR Official Registry Book on or before the effectivity of these regulations; Taxpayers who would like to know if they have a verified information may inquire through a letter addressed to the Commissioner of Internal Revenue.
c. Those with tax fraud cases pending in the Department of Justice or in the courts for adjudication;
d. Those with unpaid tax liability as admitted and reflected in the books of accounts/records, or financial statements and tax returns of the covered period, with respect to the tax type covered by the said admitted tax liability, unless they first pay the same ( i.e., DST payable, withholding tax payable, and unpaid individuals' second installment of income tax, etc.); and
e. Those with cases handled by the Bureau of Internal Revenue under the RATE Program.

Taxpayers with duly issued FANs, whether protested or unprotested, at the time of the effectivity of RR No. 18-2005, cannot avail of the EVAP.

**Q6. What are the benefits granted under the EVAP?**

A6. A taxpayer who has availed of the EVAP shall not be audited except upon prior authorization and approval of the Commissioner of Internal Revenue when there is strong evidence or finding of understatement in the payment of a taxpayer's correct liability by more than thirty percent (30%), as supported by a written report of the appropriate officer stating in detail the facts and the law on which the findings are based.

Audit shall automatically be suspended upon filing of the application and payment of the EVAP amount. Letters of Authority (LAs)/Audit Notices (ANs),

Letter Notices (LNs), Taxpayer Verification Notices (TVNs) and Mission Orders (MOs) shall be cancelled and withdrawn for EVAP availments with issued Certificates of Qualification.

The suspension of audit/investigation and the cancellation of the authority to audit/investigate, shall be on a per tax type basis or only on the kind of tax covered by the EVAP availment.

**Q7. What will happen if a taxpayer under audit availed of the EVAP and such availment did not meet the requirements for qualification?**

A7. If after evaluation, the taxpayer has been determined as not qualified for the benefits of the EVAP, the audit shall be revived and should proceed accordingly. The EVAP payment shall be credited against deficiency tax due that pertains to the same tax type and same taxable year covered by the availment.

**Q8. How can the taxpayer avail of the EVAP?**

A8. The EVAP applicant-taxpayer shall signify his intention to avail of last priority in the audit and investigation by filing an application form (BIR Form 2113)and paying the EVAP amount using BIR form 0614 with the appropriate BIR collection agent [Accredited Agent Bank (AAB) or Revenue Collection Officer (RCO)/Deputized Municipal Treasurer (DMT), in the absence of an AAB].

**Q9. Can a taxpayer file first the EVAP application form and pay after the application has been determined by the BIR to be qualified under the requirements of the regulations?**

A9. Availment is made through filing of the EVAP application form together with the documentary requirements and paying the EVAP amount using the EVAP payment form.

**Q10. What are the forms to be used for EVAP availment?**

A10. BIR form 2113-EVAP application form and BIR form 0614 as payment form.

**Q11. What are the documentary requirements that must accompany the EVAP application form?**

A11. The documentary requirements per tax type are enumerated under the Guidelines and Instructions at the back of BIR Form No. 2113- EVAP application form.

**Q12. What are the conditions for availment? How is the EVAP amount payable determined?**

A12. The EVAP amount to be paid shall be the higher amount between the result in condition no. (1), the prescribed percentage in the applicable or covered

taxable year, or the absolute amount in condition no. (2), which is the minimum EVAP payment in absolute amount per taxable year, as stated in Section 3( a ) of the regulations.

Thus, if a tax return was filed and the corresponding tax was already paid during the covered year, the difference between the tax due in the covered or applicable year and the tax due during the base year should show at least a 20% increase in the covered year. Any shortage from the 20% requirement is compared with the minimum amount to determine the EVAP amount payable. The higher amount between the additional tax required to meet the 20% increase in condition no.1 and the minimum amount in condition no.2 shall be the EVAP amount payable. In case the 20% increase has already been met based on the tax due per filed tax return for the covered year as compared to that of the base year, payment of the minimum absolute amount in condition no. 2 is sufficient EVAP payment.

**Q13. What is the condition for the taxpayer to avail of EVAP on income tax?**

A13. For taxpayers with returns filed both on the base year and the covered year, the conditions are the following:

The higher amount between:

1. The total tax due for the applicable/covered year is at least 20% higher than the tax due of the base year, OR
2. the minimum absolute amount due for the following taxpayer classification:
   - Individual - P10,000
   - Estate/Trust - P50,000
   - Corporation - P100,000
   - Large Taxpayers (LTS) -P1,000,000
   - Taxpayers with cases handled by the National Investigation Division -P1,000,000

Sample computations:

Example 1

X Company is a non-large corporation. X Company's final income tax return filed for the taxable year 2004 shows the following:

| | 2003 | 2004 |
|---|---|---|
| Taxable Income | P5,000,000 | P5,500,000 |
| Sales for the Year | 60,000,000 | 70,000,000 |
| Gross Income | 18,000,000 | 20,000,000 |
| Minimum corporate income tax due | P360,000 | |
| Income tax due/Basic Tax (32%) | P1,600,000 | P1,760,000 |

| | | | |
|---|---|---|---|
| Less: Creditable amounts: | | | |
| 1. | Quarterly income taxes | P 150,000 | 250,000 |
| 2. | Creditable withholding taxes | 150,000 | 250,000 |
| Balance Paid per Return | | P1,300,000 | P1,260,000 |
| Tax Due per Return | | P1,600,000 | P1,760,000 |

X Company believes that it may not have paid its correct income tax liability for the year 2004 which, in its computation, amounts to an additional tax payment of P100,000; hence, it would like to avail of the Enhanced Voluntary Assessment Program. Based on the information provided above, "X Company" shall pay an EVAP amount equal to P160,000 which is the higher amount computed based on the following conditions:

(1) The total tax due for the applicable year is at least 20% higher than that of the basic tax due per 2003 final adjustment income tax return originally filed or, P320,000.00 so the tax due for 2004 must be at least P1,920,000. Since the tax due for 2004 is only P1,760,000, the taxpayer must pay an additional amount of P160,000 which is higher than the minimum amount of P100,000.

Example 2.

Given —ABC Corp. is a non-large taxpayer.

a. Year 2003 income tax return filed where normal income tax due is P180,000 and MCIT is P200,000
b MCIT paid for 2004 is 220,000
c. Tax to be paid under condition No 1 is P200,000 x 120%= 240,000
less tax paid per return 220,000
additional tax under Condition No 1 20,000

The taxpayer wants to avail of the EVAP for its income tax return filed for the year 2004. In order to qualify for the privileges under this Order, such taxpayer should pay an EVAP amount of P100,000 which is the higher than the required computed increase.

**Q14. If the taxpayer has reached the required percentage of increase in condition no.1, is he required to pay the minimum absolute amount in order to qualify for EVAP?**

A14. Yes, payment of the minimum absolute amount in condition no. 2 is required for all EVAP applications, where the required percentage increase has already been met in the tax due for the covered year. The only instance when the taxpayer is not required to pay the minimum amount in condition no. 2 is when the additional payment to comply with condition no.1 is higher than the minimum absolute amount.

**Q15. Should the deficiency tax paid on audit or Letter Notices on the base year be included in the computation of the tax due?**

A15. Yes, they should include the basic deficiency tax paid under audit as part of the tax due and the basic deficiency tax paid on LN issued per RMO 30-2003 in the computation of the total tax due for the base year. Payments under RR 15-2005 shall also be considered for EVAP purposes to the extent of the basic tax only.

**Q16. How is documentary stamp tax (DST) computed if there is no return filed in the base year or if there is a return filed, such return reflects a zero tax due?**

A16. Sample computation for DST .

"ABC Insurance Corporation" has the following information with regard to its documentary stamp liabilities for taxable year 2004:

| | |
|---|---|
| Documentary Stamp Taxes (DST) Due Per Books or Per Record of the Insurance Commission | P17,000,000 |
| DST Paid | 8,000,000 |
| DST Payable | P 9,000,000 |

In the above illustration, before "ABC Insurance Corporation" can avail of the privileges of the EVAP provided in the regulations, it should first complete the payment of the DST due in the amount of P17,000,000 by paying the balance of P9,000,000. In case it avails of the EVAP for the taxable year 2004, the EVAP to be paid shall be P3,400,000, computed as follows:

| | |
|---|---|
| DST due applying 2004 figures (P17,000,000 x 20%) | P3,400,000 |

**Q17. How is the income tax due computed in case there is an income tax carry over or in case the taxpayer paid the Minimum Corporate Income Tax (MCIT)?**

A17. Income tax carried over from the base year shall be considered in computing for the tax due in the covered year.

If the tax due in the base year is the MCIT, the basis of computing the required increase in condition no. 2 is 20% of the MCIT paid during the base year.

**Q18. What will be the basis of computation for taxpayers with outstanding Letter Notices (LNs) on the covered year and they want to avail of EVAP?**

A18. For taxpayers with outstanding Letter Notices, the EVAP amount will be computed using the conditions laid down in Sec 3 of RR 18-2005, provided that Final Assessment Notices have not yet been issued against such LNs at the time of the effectivity of RR No. 18-2005.

In case of understatement of the correct tax liability by more than 30% as supported by a written report of the appropriate office stating in detail the facts and the law on which such finding is based, Section 2 of the regulations will apply, wherein the Commissioner may authorize and approve the audit of such taxpayers. Only the Commissioner can authorize the audit and investigation of a taxpayer who have availed of the program.

**Q19. How is the Net VAT Due computed? Does it include interest and penalties paid?**

A19. Net VAT Due is Output Tax minus Input Tax claimed within the covered year, net of refund and tax credit claimed. It does not include interest, surcharge and penalties.

**Q20. If a taxpayer was subject to percentage tax in the base year and has become a VAT taxpayer in the covered year, what will be the basis of computing the EVAP payment?**

A20. In such a case, tax returns were filed, only that there are two different tax types involved. For the purpose of computing the allowable EVAP amount payable, the 20% increase should be based on the total percentage tax payments during the base year. Any shortage in the 20% requirement as provided in condition no.1 of Section 3 (a) of the regulations shall also be compared with the minimum absolute amount in condition no. 2, and the higher amount is the EVAP payable.

**Q21. If a taxpayer has availed of EVAP in 2002, and he wants to avail again for 2003, what will be the amount to be considered as tax due of the base year?**

A21. EVAP payments made for the previous year shall not be included in the computation of the tax base for the covered year. Each year shall be treated as independent of each other.

**Q22. How can the taxpayers who have previously filed one time transaction returns avail if they still have to pay additional basic taxes thereon?**

A22. A taxpayer who has previously filed tax return/s (i.e., estate and/or donor's tax or final capital gains tax or expanded withholding tax and documentary stamp tax on the sale, exchange or disposition of real property or shares of stock not traded in the stock exchange) but thinks that he has erroneously paid the amount of tax due may, nevertheless, avail of the EVAP by filing his EVAP application using the prescribed BIR Form and pay the corresponding EVAP

amount: Provided, however, that the EVAP amount to be paid shall at least be equal to twenty percent (20%) of the basic tax computed based on the tax return originally filed if no additional tax has to be paid, or one hundred twenty percent (120%) of the actual unpaid tax due, if any.

**Q23. Can a taxpayer who did not file the required return for one time transaction and pay the amount due thereon avail of EVAP? How?**

A23. If no return has been filed and no payment was made, the EVAP may be availed of by paying 120% of the basic tax due computed based on the rates applicable and in accordance with the statutes in force at the time the taxable transaction or event occurred using the prescribed BIR Form. Nonetheless, the applicant-taxpayer shall manually file the required return/s with the concerned BIR office. Provided, however, that in the case of transfers of real property and shares of stocks, the prescribed valuation rules shall be applied; Provided, further, that the documentary requirements and deductions claimed shall be fully substantiated and supported, with full compliance of Revenue Regulations 02-2003 and RMO No. 15-2003.

**Q24. For the purpose of computing the minimum amount on the EVAP availment for withholding taxes, what is the treatment for the different kinds of withholding taxes?**

A24. While withholding tax has different classifications, withholding tax on compensation, expanded withholding tax, final withholding tax and withholding tax on government money payments, the same shall be taken collectively within a taxable year for the purpose of computing the required increase and comparing it with the minimum EVAP amount payable.

**Q25. What are the available modes of payment?**

A25. Only cash payments are acceptable. EVAP payments shall not include any tax debit memo, creditable withholding tax and MCIT carry-over.

**Q26. What will be the treatment of EVAP payments in case of disqualification?**

A26. If despite EVAP availment, tax audit is conducted on the covered year under the circumstances allowed by the regulations, the EVAP payment shall be credited against the deficiency tax after audit for the same tax type and same taxable year.

**Q27. What will happen to invalid availments of the No Audit Program (NAP)? How about that of RR 15-2005?**

A27. Taxpayers who have applied for the NAP, but whose availments are found to be invalid, may avail of the privilege under this program. Payment under NAP may be credited against the EVAP on a per tax type/ per taxable year basis. Prior

notice of disqualification is necessary before application of payment of NAP for EVAP purposes. Incomplete availments under RR 15-2005 may be credited against the EVAP for the covered year but limited to condition Number 1 only not against the minimum amount.

**Q28. What is the condition for installment payment of the EVAP?**

A28. When the EVAP amount is in excess of Five Million Pesos (Php 5,000,000.00), the taxpayer may elect to pay the tax in three (3) equal installments provided that all installment payments shall be made on or before December 31, 2005.

**Q29. Is there an extension of the due date for installment payment?**

A29. Taxpayers may request in writing an extension for installment payment of EVAP on the ground of financial incapacity. The request shall be approved by the concerned Regional Director or Officer-in-Charge, Large Taxpayers Service upon compliance with the conditions stated hereunder.

**Q30. What are the conditions for extension of the installment period?**

A30. The requirements to be filed with the Revenue District Office having jurisdiction over the taxpayer, or at the Large Taxpayers Service, in the case of large taxpayers, are as follows:

1.Taxpayer must submit a list of banks in which he/it maintains bank deposits/accounts;
2.Taxpayer must execute a waiver of bank secrecy of deposits thereby authorizing the BIR to inquire into the bank accounts of the taxpayer in order to verify his claim of financial incapacity;
3.Taxpayer must submit a written undertaking to pay the EVAP installments within a period not exceeding six (6) months from date of filing his/its EVAP application; and
4.Taxpayer must put up a bond corresponding to the installment payments to be made if the tax case is prescribing within six (6) months from the date of filing the EVAP application.

**Q31. When is the deadline for availment?**

A31 The deadline for availment is December 30, 2005.

(Original Signed)
**JOSE MARIO C. BUÑAG**
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