REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

November 16, 2004

REVENUE MEMORANDUM CIRCULAR NO. 72-2004

SUBJECT : Clarification of Issues on the Additional Transactions Subject to Creditable Withholding Tax under Revenue Regulations No. 17-2003 (RR 17-2003), as amended by RR 30-2003, RR 1-2004 and RR 3-2004

T O : All Withholding Agents, Internal Revenue Officers and Employees and Others Concerned

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I. BASIS OF WITHHOLDING TAX

Q1. What shall be the basis of expanded withholding tax (EWT) or creditable withholding tax (CWT) on payments made to a Non-VAT registered supplier of goods or services?

A1. The basis shall be the gross billing.
Example of income payment to NON-VAT registered contractor:

Gross Billing on Services	*P100,000.00*
Less: 2% EWT x P100,000.00	*2,000.00*
Net amount due the payee	*P 98,000.00*

Q2. What shall be the basis of CWT to a VAT registered supplier of goods and services?

A2. The basis shall be the gross amount paid exclusive or net of VAT.

Example of income payment to VAT registered contractor:

Gross amount paid	*P110,000.00*
Less: 2% EWT (P110,000.00 x 10/11 x 2%)	*2,000.00*
Amount due the payee	*P108,000.00*

Q3. What shall be the basis of EWT in case goods and services are not billed separately on purchases made by the Top 10,000 Private Corporations (TTC)/Government Office (GO)/Large Taxpayer (LT)?

A3. In cases where purchase of goods are separately billed from purchase of service, the applicable rate of 1% on goods and 2% on services shall be applied respectively. However, in case of failure to separately bill goods and services, the higher rate of 2% shall apply.

Q4. On rentals of personal property in excess of P10,000.00 per year under Section 2.57.2(C)(2) of RR 2-98 as amended by RR 17-2003, what will be the basis of the 5% EWT considering the following payments for taxable year 2003 and on what month will the payor withhold the tax?

June	P 3,000.00
July	3,000.00
August	3,000.00
September	5,000.00
TOTAL	P 14,000.00

A4. The basis of the 5% EWT shall be the total amount of P14,000.00 to be deducted from the September payment since it is the period when it exceeded the threshold of P10,000.00/annum. However, if the withholding agent reasonably expects that the annual rental will exceed P10,000.00, then it may start withholding on the first month in the above example (June). "Reasonably expects" is determined when it clearly shows in the documents like lease contract/agreement the amount to be received within a given period.

The basis of withholding as applied above shall also be applicable to other income payments with applicable threshold amount of income payments.

Q5. Could we consider a seller of goods or services as regular supplier if the amount per transaction is only P500.00 but has more than six (6) transactions in a taxable year?

A5. The term "regular suppliers" is defined as suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, ***regardless of amount per transaction****, either in the previous year or current year. The threshold amount of less than P10,000.00 applies only to a "single purchase".*

II. ON INCOME PAYMENTS TO MERALCO, COMMUNICATIONS AND OTHER UTILITY COMPANIES

Q6. Are payments to Meralco and telecommunications companies like PLDT, SMART, etc. considered payment for services and as such, subject to the 2% EWT if the payor is TTC/GO/LT?

A6. Payments to Meralco and telecommunications companies are considered payments for services and therefore subject to the 2% EWT if the payor is a TTC/GO/LT pursuant to Sections 2.57.2 (M) and (N) of RR 2-98, as amended.

Q7 For payments made to Meralco by TTC/GO/LT, what will be the tax base in the computation of the 2% EWT.

A7 It shall be the current amount due appearing in the billing statement.

Q8. Is the installation and removal cost of service application for temporary service, reimbursements made by the payor to Meralco for charges for relocation of poles and other electrical facilities, use of rubber hose for safety precaution and testing of meters considered as non-revenues subject to the 2% EWT?

A8. The payment made by the TTC/GO/LT to Meralco on installation and removal cost of service application for temporary service is subject to the 2% EWT. On the other hand, all amounts reimbursed by the payor to Meralco for relocation of poles and other electrical facilities are not subject to 2% EWT.

Q9. Is the payment to telecommunications companies by the TTC/GO/LT on overseas dispatch, message or conversation originating in the Philippines subject to the 2% EWT? What shall be the tax base?

A9. Yes. The tax base shall be the amount paid less the overseas communication tax.

Q10. Is the TTC/GO/LT-lessee required to withhold the 2% EWT on its payments to Meralco, PLDT and other utility companies which are coursed through the lessor, the electric meter being in the name of the lessor?

A10. Yes*, the TTC/GO/LT-lessee shall withhold the 2% EWT whether or not the electric meter is in its name provided that valid proof that payment of a particular expense is being shouldered by the payor claiming the expense. The lessee shall present the contract of lease together with the photocopy of the notice from the BIR designating the corporation as one of the Top 10000 Private Corporations to Meralco, PLDT and other utility companies through the lessor and shall likewise issue the corresponding BIR Form No. 2307 in the name of the utility companies.*

Q11. TTC/GO/LT failed to withhold tax on payments to Meralco, telecommunications companies, service providers, purchase of supplies or goods etc. as enumerated under RR 17-2003 from June, 2003 to present. May the TTC/GO/LT deduct the tax from the current billing of the said companies? Will the TTC/GO/LT be penalized for its failure to withhold for the months of June and July, 2003?

A11. No, withholding of the EWT shall be in the current month and may only be deducted in the billings for the current month. Penalties for failure to withhold the 2% EWT from prior periods shall be imposed on the payor-withholding agent but it may request for abatement of penalties under RR 13-2001 dated September 27, 2001.

III. ON INCOME PAYMENTS TO PROFESSIONALS/TALENTS ETC.

Q12. What are the prevailing withholding tax rates applicable to income payments made to professionals, talent, etc.?

A12. On gross professional, promotional and talent fees or any other form of remuneration for the services of professionals, talents, etc., the withholding tax shall be 15% if the gross income for the current year exceeds P720,000 and 10%, if otherwise. The income tax withheld are creditable against the income tax due computed at the end of the quarter or taxable year.

Q13. How will the withholding agent determine the applicable rate considering that he/it may not have knowledge of the gross earning of the payee from all sources?

A13. In order to determine the applicable rate of 10% or 15% to be applied by the withholding agent, every payee (professional/talent/corporate director/juridical person) shall periodically disclose his/its gross income for the current year to the BIR by submitting a NOTARIZED SWORN DECLARATION in three (3) copies {2copies for BIR and 1 copy for the taxpayer} to the Collection Division of the Regional Office/LTAD/LTDO where the income earner is registered. The disclosure should be filed on June 30 of each year or within 15 days after the end of the month the payee's income reaches P720,000, whichever comes earlier. In case the total gross income is less than P720,000 as of June 30, he shall submit a second disclosure within 15 days after the end of the month when his gross income exceeded P720,000. Copies of the sworn declaration stamped "RECEIVED" by the BIR shall be furnished to each concerned withholding agent/payor.

Thus, for the period January1 to June 30, unless the payee has informed the payor/withholding agent through the sworn declaration that his gross income has exceeded P720,000, the applicable withholding tax rate is 10%. Starting

July 1, if the payee fails to execute a sworn declaration or furnish a copy to the payor if one has been executed, the withholding tax shall be 15%.

In case the withholding agent has made accumulated payments within the year exceeding P720,000 to a particular payee, then subsequent payments by the payee shall be subjected to 15% even without the sworn declaration.

Q-14. Are honoraria paid to instructors of cooking lessons, martial arts and various sports and health activities subject to EWT?

A-14. Yes, they are considered talent fees subject to the 10% EWT if current annual income of the instructor is P720,000.00 and below and 15%, if otherwise.

IV. OTHER CLARIFICATION

Q15. Are payments for life and non-life insurance premium by the TTC/GO/LT to domestic/resident foreign insurance companies considered payment for services subject to the 2% EWT?

A15. Yes.

Q16. What will be the basis of the 2% EWT to be deducted on the premium for the insurance coverage of the vehicle sold to the customer of a TTC-automotive dealer to the Insurance Company considering the information on the insurance policy as follows:

Premium (CTPL, OD, TPPD, etc.)	P26,000.00
VAT	2,600.00
Doc. Stamp Tax	3,250.00
Local Tax	130.00
Total amount per policy	P31,980.00

A16. The 2% EWT shall be computed based on the amount of premium paid, exclusive of the VAT and other taxes. Thus, P26,000.00 x 2% = P520.00.

Q17. Are insurance premiums paid through brokers/agents subject to the 2% EWT?

A17. Yes, premium payments to insurance companies through brokers or agents or any other person authorized to receive/collect payment on behalf of the insurance company shall be subject to the 2% EWT to be withheld by the payor or person having control over the payment. However, the payor is required to issue the corresponding certificate of taxes withheld (BIR Form No. 2307) in the name of the insurance company, not in the name of the insurance broker.

Q18. Is payment of interest on bank loans by the TTC/GO/LT and other fees paid to the bank subject to the 2% EWT?

A18. Yes. However, payment of interest to OBUs/FCDUs shall be subject to final withholding tax of 10%.

Q19. Is the payment of the principal and interest on loans, service fees and other charges considered as income extended by local banks, quasi-banks and other financial institutions to the TTC/GO/LT subject to the 2% EWT?

A19. Only the interest payments on loans, service fees and other charges considered as income are considered payment for services rendered, hence, subject to 2% EWT. Payment corresponding to the principal amount is not subject to EWT.

Q20. If the payment for the purchase of goods or services to their regular suppliers by the TTC/GO/LT is through credit card or through company issued credit card to officers/ employees for purposes of reimbursements, will the TTC/GO/LT be required to withhold the tax when it presents the credit card to the supplier?

A20. The TTC/GO/LT is not required to withhold the tax upon presentation of the credit card to the supplier. The TTC/GO/LT, however, is required to withhold the 2% expanded withholding tax corresponding to the interest payment and/or service fee and other charges imposed by the credit card company. The credit card company, on the other hand, shall withhold 1% of 50% of the gross amount paid to any business entity pursuant to Section 2.57.2(L) of RR 2-98, as amended.

Q21. Is the payment by the TTC/GO/LT to their regular suppliers through employees/agents or any persons purchasing for or in its behalf representing reimbursable expenses by the payee subject to the EWT?

A21. Yes, the reimbursable expenses are subject to the EWT of 1% on goods or 2% on services provided that the sales invoice/official receipt shall be in the name of the persons whom the former represents and the corresponding certificate of taxes withheld at source (BIR Form No. 2307) is issued. It is reiterated that BIR Form No. 2307 shall only be issued by duly authorized representative of the employer-withholding agent.

Q22. Is the payment made by the TTC/GO/LT to a customs broker for arrastre, customs duties, wharfage, documentation, handling fee and forwarders subject to the 2% EWT?

A22. Yes, it is subject to the 2% EWT. However, advance payment by the customs brokers for expenses such as arrastre, wharfage, documentation fee, etc. should not form part of the gross receipts if invoiced directly in the name of the broker's client and if reimbursement to the broker is not invoiced with the broker's VAT invoice/official receipt.

Q23. Is the payment for membership dues of the TTC/GO/LT to country clubs and/or sports club and the like considered service subject to the 2% EWT under RR 17-2003?

A23. Yes, membership fees are considered services subjected to the 2% EWT. However, when the payee-club or organization is a non-stock, non-profit organization not subject to income tax, hence, payment is not subject to EWT upon presentation of proof of exemption issued by the BIR.

Q24. What will be the basis of the 2% EWT if the charges of hotel, motel, resort and similar establishments to TTC/GO/LT include room accommodation, food and beverage, laundry, business center charges, etc. including service charges?

A24. The basis shall be the gross billing exclusive or net of the VAT for VAT registered payees and gross billing for NON-VAT registered payees.

Q25. Are payments made by TTC/GO/LT for the purchase of movie and/or concert tickets subject to the 2% EWT?

A25. Yes, payment for movie/concert tickets are considered payment for services and therefore subject to 2% EWT.

Q26. Are the corporations previously belonging to the Top 5000 corporations still required to file the list of regular suppliers of goods? How about suppliers of services?

A26. Yes, former Top 5000 corporations are still required to submit the list of their regular suppliers of goods ***and services*** *unless they have been informed by the BIR that they ceased to be included in the Top 10000 corporations. They are required to submit their 1st semester list on July 31 and 2nd semester on January 31 of the following year. They shall continue to withhold 1% EWT for the purchase of goods and 2% for services unless informed otherwise.*

Q27. Are services rendered by private hospitals and entities considered as government owned or controlled corporations (GOCC) subject to the 2% EWT if the payor is a TTC/GO/LT?

A27. Yes, since they are also engaged in the supply of services. Only GSIS, SSS, PHILHEALTH, PAGCOR & PCSO are exempted from income tax, and consequently from EWT.

Q28. Is payment by TTC/GO/LT for magazine/newspaper subscription subject to 1% EWT?

A28. Yes, it shall be considered purchase of goods subject to 1% EWT.

Q29. Is the amount paid to TV or radio stations by the TTC/GO/LT for airing commercials and payment made directly to newspaper publishers for print advertisements subject to the 2% EWT?

A29. Yes, they are considered suppliers of service and therefore subject to 2% EWT.

Q30. Is the payment made by an advertising agency for the print advertisement of TTC/GO/LT to newspaper publishers (Manila Bulletin, Manila Times, etc.) subject to EWT?

A30. The payment made by the advertising agency for the print advertisement of TTC/GO/LT to the newspaper publisher is subject to the 2% EWT provided that the advertising agency is a TTC/LT.

Q31. Is the payment made to Health Maintenance Organizations (HMOs) by TTC/GO/LT subject to EWT?

A31. Yes, the payment is subject to 2% EWT.

Q32. Are payments made by TTC/GO/LT to cooperatives for the purchase of goods and/or services subject to EWT?

A32. Yes, except when they can show proof of exemption from income tax issued by the BIR.

Q33. Are payments made to companies registered with PEZA/BOI for the purchase of goods or services subject to EWT?

A33. Yes. However, payments to PEZA/BOI registered companies which are exempt from income tax shall not be subjected to EWT pursuant to Section 2.57.5 of RR 2-98, as amended, upon presentation of proof of exemption issued by the BIR.

Q34. Are payments made to embassies for visa fees/services subject to EWT?

A34. No.

Q35. Is the payment by a TTC-bank to the Car or Automotive Dealer representing a certain percentage of the cost of the vehicle bought by a customer through financing subject to EWT? What is the rate?

A35. The payment shall be considered purchase of goods (vehicle) and shall be subject to 1% EWT.

Q36. Is the amount paid by a TTC/GO/LT to the automotive dealer representing the entire amount of a car availed of by an employee through a company car plan subject to EWT if the car will be registered with Land Transportation Office (LTO) under the name of the employee?

A36. Yes, the amount paid by the TTC/GO/LT to the automotive dealer is subject to 1% EWT.

Q37. For those availing of EFPS, what shall be the deadlines for filing of returns and remittance of taxes withheld?

A37. The date of filing of withholding tax returns shall be in accordance with the deadlines set in RR 26-2002 while the remittance of taxes withheld shall be five (5) days later than the deadlines set for taxpayer/withholding agents not availing of the EFPS.

All internal revenue officers and employees are hereby enjoined to give this Circular as wide a publicity as possible.

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue

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