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

June 20, 2014

REVENUE MEMORANDUM ORDER NO. 23- 2014

SUBJECT : *Obligations of Government Agencies, Bureaus and Instrumentalities as Withholding Agents*

TO : *All Officials and Employees in the Public Sector (whether exercising Proprietary or Governmental Functions), including Internal Revenue Officials, Employees and Others Concerned*

I. SCOPE

Further to Revenue Memorandum Circular No. 23-2012 dated February 14, 2012 on the "*Reiteration of the Responsibilities of the Officials and Employees of Government Offices for the Withholding of Applicable Taxes on Certain Income Payments and the Imposition of Penalties for Non-Compliance Thereof*", this Order is being issued to clarify and consolidate the responsibilities of the public sector to withhold taxes on its transactions as a customer (on its purchases of goods and services) and as an employer (on compensation paid to its officials and employees) under the National Internal Revenue Code (NIRC) of 1997, as amended, and other special laws.

II. OBLIGATION TO WITHHOLD ON PURCHASES OF GOODS AND SERVICES

All government offices including government-owned or controlled corporations (such as but not limited to the Bangko Sentral ng Pilipines, Metropolitan Waterworks and Sewerage System, Philippine Deposit Insurance Corporation, Government Service Insurance System, Social Security System), as well as provincial, city and municipal governments are constituted as withholding agents for purposes of the creditable tax required to be withheld on the following:

A. Withholding of Creditable Income Tax

- Income payments to certain contractors — On gross payments to the following contractors, whether individual or corporate — Two percent (2%).

  These Contractors include:

  (1) General engineering contractors — Those whose principal contracting business in connection with fixed works requiring specialized engineering knowledge and skill including the following divisions or subjects:

(a) Reclamation works;
(b) Railroads;
(c) Highways, streets and roads;
(d) Tunnels;
(e) Airports and airways;
(f) Waste reduction plants;
(g) Bridges, overpasses, underpasses and other similar works;
(h) Pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances;
(i) Land leveling;
(j) Excavating;
(k) Trenching;
(l) Paving; and
(m) Surfacing work.

(2) General Building contractors — Those whose principal contracting business is in connection with any structure built, for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereto. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds, and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skills, powerhouse, power plants and other utility plants and installation, mines and metallurgical plants, cement and concrete works in connection with the above-mentioned fixed works.

(3) Specialty Contractors — Those whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

(4) Other contractors —

(a) Filling, demolition and salvage work contractors and operators of mine drilling apparatus;
(b) Operators of dockyards;
(c) Persons engaged in the installation of water system, and gas or electric light, heat or power;
(d) Operators of stevedoring, warehousing or forwarding establishments;
(e) Transportation contractors which include common carriers for the carriage of goods and merchandise of whatever kind by land, air or water, where the gross payments by the payor to the same payee amounts to at least two thousand pesos (P2,000) per month, regardless of the number of shipments during the month;

(f) Printers, bookbinders, lithographers and publishers except those principally engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale;
(g) Messengerial, janitorial, private detective and/or security agencies, credit and/or collection agencies and other business agencies;
(h) Advertising agencies, exclusive of gross payments to media;
(i) Independent producers of television, radio and stage performances or shows;
(j) Independent producers of "jingles";
(k) Labor recruiting agencies
(l) Persons engaged in the installation of elevators, central air conditioning units, computer machines and other equipment and machineries and the maintenance services thereon;
(m) Persons engaged in the sale of computer services;
(n) Persons engaged in landscaping services;
(o) Persons engaged in the collection and disposal of garbage;
(p) TV and radio station operators on sale of TV and radio airtime; and
(q) TV and radio blocktimers on sale of TV and radio commercial spots.

- Income payments to its local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. —

Supplier of goods	—	One percent (1%)
Supplier of services	—	Two percent (2%)

However, casual government purchases amounting to not more than Ten thousand pesos (P10,000.00) are not subject to the 1% or 2% withholding of income tax.

- Rentals — On gross rental for the continued use or possession of real property used in business which the government has not taken or is not taking title, or in which it has no equity — Five percent (5%).

B. Withholding Tax on Government Money Payments-

- On purchases of goods and services from VAT registered suppliers/payees - Five percent (5%) of the gross payment

However, if the payment for lease or use or properties or property rights is due to nonresident owners, the rate shall be Twelve percent (12%) withholding tax at the time of payment.

Purchases of the government that are covered by Purchase Orders duly signed by the authorized official/s as well as purchases using the Petty Cash Fund shall be subject to the 5% final VAT withholding. However, purchases by any government official and employee recorded as reimbursable allowance, benefit or incentive to government official and employee by the concerned government office are not covered by the withholding of 5% final VAT.

- On purchases of goods and services from non-VAT registered suppliers/payees – Three percent (3%) of the gross payment

- Other withholding of taxes on transactions which are applicable to the functions of a particular government office including government-owned or controlled corporations, as well as provincial, city and municipal governments, government agency, institution or instrumentality such as, but not limited to, withholding tax on interest and purchase of gold by the Bangko Sentral ng Pilipinas.

- The same rates of withholding taxes shall apply to Resident Foreign Contractors.

C. For Non-Resident Foreign Contractors, the following withholding tax rates shall apply, subject to applicable tax treaty :

    - For Individuals- Twenty-five percent (25%)
    - For Foreign Corporations- Thirty percent (30%)

D. Such other withholding taxes that may be mandated from time to time by the Bureau of Internal Revenue in the implementation of the NIRC of 1997, as amended.

III. OBLIGATION TO WITHHOLD ON COMPENSATION PAID TO GOVERNMENT OFFICIALS AND EMPLOYEES

As an employer, government offices including government-owned or controlled corporations (such as but not limited to the Bangko Sentral ng Pilipines, Metropolitan Waterworks and Sewerage System, Philippine Deposit Insurance Corporation, Government Service Insurance System, Social Security System), as well as provincial, city and municipal governments are constituted as withholding agents for purposes of the creditable tax required to be withheld from compensation paid for services of its employees.

Under Section 32(A) of the NIRC of 1997, as amended, compensation for services, in whatever form paid and no matter how called, form part of gross income. Compensation income includes, among others, salaries, fees, wages, emoluments and

honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is, at the same time, an employee of the employer/corporation; taxable bonuses and fringe benefits except those which are subject to the fringe benefits tax under Section 33 of the NIRC; taxable pensions and retirement pay; and other income of a similar nature.

The foregoing also includes allowances, bonuses, and other benefits of similar nature received by officials and employees of the Government of the Republic of the Philippines or any of its branches, agencies and instrumentalities, its political subdivisions, including government-owned and/or controlled corporations (herein referred to as *officials and employees in the public sector*) which are composed of (but are not limited to) the following:

A. Allowances, bonuses, honoraria or benefits received by employees and officials in the Legislative Branch, such as anniversary bonus, Special Technical Assistance Allowance, Efficiency Incentive Benefits, Additional Food Subsidy, Eight (8th) Salary Range Level Allowance, Hospitalization Benefits, Medical Allowance, Clothing Allowance, Longevity Pay, Food Subsidy, Transition Allowance, Cost of Living Allowance, Inflationary Adjustment Assistance, Mid-Year Economic Assistance, Financial Relief Assistance, Grocery Allowance, Thirteenth (13th) Month Pay, Cash Gift and Productivity Incentive Benefit and other allowances, bonuses and benefits given by the Philippine Senate and House of Representatives to their officials and employees, subject to the exemptions enumerated herein.

B. Allowances, bonuses, honoraria or benefits received by employees and officials in the Judicial Branch, such as the Additional Compensation (ADCOM), Extraordinary and Miscellaneous Expenses (EME), Monthly Special Allowance from the Special Allowance for the Judiciary, Additional Cost of Living Allowance from the Judiciary Development Fund, Productivity Incentive Benefit, Grocery Allowance, Clothing Allowance, Emergency Economic Allowance, Year-End Bonus, Cash Gift, Loyalty Cash Award (Milestone Bonus), SC Christmas Allowance, anniversary bonuses and other allowances, bonuses and benefits given by the Supreme Court of the Philippines and all other courts and offices under the Judicial Branch to their officials and employees, subject to the exemptions enumerated herein.

C. Compensation for services in whatever form paid, including, but not limited to allowances, bonuses, honoraria or benefits received by employees and officials in the Constitutional bodies (Commission on Election, Commission on Audit, Civil Service Commissioner) and the Office of the Ombudsman, subject to the exemptions enumerated herein.

D. Allowances, bonuses, honoraria or benefits received by employees and officials in the Executive Branch, such as the Productivity Enhancement Incentive (PEI), Performance-Based Bonus, anniversary bonus and other allowances, bonuses and benefits given by the departments, agencies and other offices under the Executive Branch to their officials and employees, subject to the exemptions enumerated herein.

Any amount paid either as advances or reimbursements for expenses incurred or reasonably expected to be incurred by the official and employee in the performance of his/her duties are not compensation subject to withholding, if the following conditions are satisfied:

1. The employee was duly authorized to incur such expenses on behalf of the government; and

2. Compliance with pertinent laws and regulations on accounting and liquidation of advances and reimbursements, including, but not limited to, withholding tax rules. The expenses should be duly receipted for and in the name of the government office concerned.

Other than those pertaining to intelligence funds duly appropriated and liquidated, any amount not in compliance with the foregoing requirements shall be considered as part of the gross taxable compensation income of the taxpayer. Intelligence funds not duly appropriated and not properly liquidated shall form part of the compensation of the government officials/personnel concern, unless returned.

IV. NON-TAXABLE COMPENSATION INCOME — Subject to existing laws and issuances, the following income received by officials and employees in the public sector are not subject to income tax and withholding tax on compensation:

A. Thirteenth (13th) Month Pay and Other Benefits not exceeding Thirty Thousand Pesos (P30,000.00) paid or accrued during the year. Any amount exceeding Thirty Thousand Pesos (P30,000.00) are taxable compensation. This includes:

   1. Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686 ("*An Act Authorizing Annual Christmas Bonus to National and Local Government Officials and Employees Starting CY 1988*");
   2. Benefits received by employees pursuant to Presidential Decree No. 851 ("*Requiring All Employers to Pay Their Employees a 13th Month Pay*"), as amended by Memorandum Order No. 28, dated August 13, 1986;
   3. Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;
   4. Other benefits such as Christmas bonus, productivity incentives bonus, loyalty award, gift in cash or in kind and other benefits of similar nature actually received by officials and employees of government offices, including the additional compensation allowance (ACA) granted and paid to all officials and employees of the National Government Agencies (NGAs) including state universities and colleges (SUCs), government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs) and Local Government Units (LGUs).

B. Facilities and privileges of relatively small value or "*De Minimis Benefits*" as defined in existing issuances and conforming to the ceilings prescribed therein;

C. Fringe benefits which are subject to the fringe benefits tax under Section 33 of the NIRC, as amended;

D. Representation and Transportation Allowance (RATA) granted to public officers and employees under the General Appropriations Act;

E. Personnel Economic Relief Allowance (PERA) granted to government personnel;

F. The monetized value of leave credits paid to government officials and employees;

G. Mandatory/compulsory GSIS, Medicare and Pag-Ibig Contributions, *provided that*, voluntary contributions to these institutions in excess of the amount considered mandatory/compulsory are not excludible from the gross income of the taxpayer and hence, not exempt from Income Tax and Withholding Tax;

H. Union dues of individual employees;

I. Compensation income of employees in the public sector with compensation income of not more than the Statutory Minimum Wage (SMW) in the non-agricultural sector applicable to the place where he/she is assigned;

J. Holiday pay, overtime pay, night shift differential pay, and hazard pay received by Minimum Wage Earners (MWEs);

K. Benefits received from the GSIS Act of 1937, as amended, and the retirement gratuity/benefits received by government officials and employees under pertinent retirement laws;

L. All other benefits given which are not included in the above enumeration but are exempted from income tax as well as withholding tax on compensation under existing laws, as confirmed by BIR.

V. CONFIRMATION OF TAX TREATMENT

In case of doubt in the appreciation of the taxability of a compensation given by a government agency or instrumentality falling under item IV (L) above, Confirmation of Exemption of the benefit shall be secured through a ruling issued by the Commissioner of Internal Revenue or his duly authorized representative.

VI. PERSONS RESPONSIBLE FOR WITHHOLDING

The following officials are duty bound to deduct, withhold and remit taxes:

a) For Office of the Provincial Government-province- the Chief Accountant, Provincial Treasurer and the Governor;

b) For Office of the City Government-cities- the Chief Accountant, City Treasurer and the City Mayor;

c) For Office of the Municipal Government-municipalities- the Chief Accountant, Municipal Treasurer and the Mayor;

d) Office of the Barangay-Barangay Treasurer and Barangay Captain

e) For NGAs, GOCCs and other Government Offices, the Chief Accountant and the Head of Office or the Official holding the highest position (such as the President, Chief Executive Officer, Governor, General Manager).

VII. PENALTY PROVISION

In case of non-compliance with their obligation as withholding agents, the abovementioned persons shall be liable for the following sanctions:

A. Failure to Collect and Remit Taxes (Section 251, NIRC)

" Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted."

B. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation (Section 255, NIRC)

" Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

C. Violation of Withholding Tax Provisions (Section 272, NIRC)

" Every officer or employee of the Government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government-owned or controlled corporations, including the Bangko Sentral ng Pilipinas (BSP), who is charged with the duty to deduct and withhold any internal revenue tax and to remit the same is guilty of any offense herein below specified shall, upon conviction for each act or omission be punished by a fine of not less than Five thousand pesos (P5,000) but not more than Fifty thousand pesos (P50,000) or suffer imprisonment of not less than six (6) months and one (1) day but not more than two (2) years, or both:

1. Failing or causing the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing rules and regulations; or

2. Failing or causing the failure to remit taxes deducted and withheld within the time prescribed by law, and implementing rules and regulations; or

3. Failing or causing the failure to file return or statement within the time prescribed, or rendering or furnishing a false or fraudulent return or statement required under the withholding tax laws and rules and regulations."

All revenue officials and employees concerned shall take measures to ensure the full enforcement of the provisions of this Order and in case of any violation thereof, shall commence the appropriate legal action against the erring withholding agent.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue