REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

March 21, 2013

REVENUE REGULATIONS NO. 5-2013

SUBJECT : Tax Treatment of Sale of Jewelry, Gold and Other Metallic Minerals to a Nonresident Alien Individual Not Engaged in Trade or Business within the Philippines or to a Nonresident Foreign Corporation.

TO : All Revenue Officials and Employees and Others Concerned

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Section 1. Background. —

The Bureau of Internal Revenue (BIR) has issued Revenue Regulations (RR) No. 6-2012 dated April 2, 2012 which imposes excise tax, value added tax and income tax on the sale of gold and other metallic minerals to other persons or entities including the Bangko Sentral ng Pilipinas (BSP).

However, it has been observed that jewelry, gold, and other metallic minerals are being sold to alien individuals or foreign entities that come to the Philippines for a limited period of time for purposes of purchasing in cash jewelry, gold and other metallic minerals, in whatever nature or form ("subject transactions"). The subject transactions are even advertised in the newspapers of general circulation. Persons who sell jewelry, gold and other minerals have escaped taxation considering that it is difficult for the BIR to track them down and/or compel them to pay the rightful taxes due to the government.

The growing popularity of these activities necessitates the Bureau to plug revenue leakages and to tap additional revenue source which is through the *advance payment of probable taxes due*. Prescribing such mode of tax collection is within the realm of the authority of the Department of Finance and the Bureau of Internal Revenue under Section 245(j) of the Tax Code which allows the promulgation of Revenue Regulations prescribing the "manner in which internal revenue taxes such as income tax, including withholding tax, estate and donor's tax, value added tax (VAT), other percentage taxes, excise taxes and documentary stamp taxes shall be paid through the collection officers of the Bureau of Internal Revenue or through duly authorized agent banks which are deputized to receive payment of such taxes and the returns, papers and

statements that may be filed by taxpayers in connection with the payment of the tax: xxx xxx xxx"

Section 2. Scope. —

Pursuant to the provisions of *Sections 244, 245 and 6* in relation to Sections 24, 25, 27, 28, 51, 52, 106, 108, 114, 116, 128, 129, 130, and 151 of the National Internal Revenue Code of 1997 (Tax Code), these Regulations are hereby promulgated to prescribe the rules on the *advance payment of business and income taxes and actual payment of excise tax* by those who sell jewelry, gold and other metallic minerals to nonresident individuals not engaged in business within the Philippines and/or the nonresident foreign corporations.

Section 3. Applicable Taxes. —

The following taxes are imposed:

A) On the sale of gold and other metallic minerals as prescribed under RR 6-2012.—

1. Excise Tax- Two percent (2%) excise tax rate based on either the actual market value of the gross output at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs (BOC) in computing tariff and duties, in the case of importations. Possessors of gold and other metallic minerals must show proof that the excise tax has been paid thereon; otherwise, they shall be assessed and be held liable for the payment thereof. Gold and other metallic minerals discovered in the possession of the persons who cannot show proof of payment of excise taxes thereon are presumed to have been removed on the day of discovery. Further, for purposes of these Regulations, possession shall mean, not only the actual, current physical possession of said gold and metallic minerals, but shall likewise cover the inclusion of said minerals in the inventory of a person or entity at any given point in time.

   Accordingly, possessors of gold and other metallic minerals, whether imported or local, must therefore be able to show proof that the excise tax due thereon has been paid. Such proof may include the following: 1) certified true copy of the Authority to Release Imported Goods (ATRIG) and Import Entry and Internal Revenue Declaration and Official Receipt issued by the BOC, for imported goods; and 2) certified true copy of the Excise Tax Return (BIR Form No. 2200M) and machine validated deposit slip of the bank where the payment and

filing has been made, for locally bought gold and other metallic minerals. Absent said proof, possessors of gold and other metallic minerals shall be held liable for the excise taxes due thereon.

2. Value added Tax/Percentage Tax- Sales of gold and other metallic minerals to persons and entities, except sale of gold to the BSP, is subject to twelve percent (12%) *VAT if the gross selling price thereof exceeds the threshold set by the Tax Code and existing issuances, currently in the amount of one million nine hundred nineteen thousand five hundred pesos (Php1,919,500) pursuant to Revenue Regulations No. 3-2012 dated February 20, 2012.* Otherwise, it shall be subject to three percent (3%) percentage tax.

3. Income Tax- Sellers are subject to Income Tax at the rate prescribed under Sections 24 and 25 in case of individual taxpayers, and under Sections 27 and 28 of the Tax Code in case of corporations. Further, sellers of said gold and other metallic minerals are required to pay the income tax in advance (creditable) to the Government.

B. On the sale of jewelry. —

1. Value added Tax/Percentage Tax- Sales of jewelry to persons and entities is subject to twelve percent (12%) VAT if the gross selling price thereof exceeds the threshold set by the Tax Code and existing issuances, currently in the amount of one million nine hundred nineteen thousand five hundred pesos (Php1,919,500) pursuant to Revenue Regulations No. 3-2012 dated February 20, 2012. Otherwise, it shall be subject to three percent (3%) percentage tax.

2. Income Tax- Sellers are subject to Income Tax at the rate prescribed under Sections 24 and 25 in case of individual taxpayers, and under Sections 27 and 28 of the Tax Code in case of corporations. Further, sellers of said jewelry are required to pay the income tax in advance (creditable) to the Government.

Section 4. Imposition of Advance Payment of Taxes. —

Sellers of jewelry, gold, and other metallic minerals are hereby required to pay business tax (VAT or percentage tax), Income Tax and Excise Tax, if applicable, in advance through the assigned Revenue Collection Officers (RCO) of the RDO having jurisdiction over the place where the subject transaction occurs regardless of whether or not said sellers are duly registered with the Bureau of Internal Revenue:

A. Advance payment of VAT at the rate of twelve percent (12%) on gross selling price or Percentage Tax at the rate of three percent (3%) on gross sales, as the case may be.
B. Advance payment of Income Tax at the rate of five percent (5%) on gross payment.
C. Actual payment of Excise Tax at the rate of two percent (2%) based on either the actual market value of the gross output at the time of removal, in the case of those locally extracted or produced; or the value used by the BOC in computing tariff and duties, in the case of importations. For purposes of these Regulations, the actual market value shall refer to the actual consideration paid by the buyer to the seller.

Existing issuances to the contrary notwithstanding, RCOs are hereby authorized to receive advance payments of business (VAT or percentage tax) and income taxes and actual payment of excise tax due from subject sellers and to issue the corresponding Revenue Official Receipt (ROR), regardless of whether or not the sellers are registered with their respective RDOs.

Section 5. Credit for Advance Payment. —

The advance payments shall be credited against the actual business tax (value added tax or percentage tax, as the case may be) and income tax due from such persons for the taxable period for which such advance payments were remitted to the Bureau of Internal Revenue.

A. Credit of Advance Business Tax. — If the seller of jewelry, gold and other metallic minerals is a non-VAT taxpayer whose gross sales/receipts does not exceed the threshold amount of Php1,919,500 in any 12-month period and therefore, liable to the 3% percentage tax imposed under Section 116 of the Tax Code, such advance business tax paid pursuant to Section 4 above shall be credited against the percentage tax due from such seller for the month for which such advance payment was collected.

   If the seller of jewelry, gold and other metallic minerals, on the other hand, is a VAT registered taxpayer, in addition to the input tax credits allowed by the Tax Code, the amount of advance VAT paid pursuant to the Section 4 above shall be allowed as credit against the VAT liability or payable by the sellers.

B. Credit of Advance Income Tax. — The amount of advance income tax paid pursuant to the Section 4 above shall be credited against the income tax due from the seller when he files his quarterly and annual income tax return.

Section 6. Proof of Advance Payment. —

The advance payment of business tax and income tax shall be evidenced by duly validated copy of BIR Form No. 0605 and ROR issued by the RCOs which shall constitute as the proof for credit of the advance payment of taxes. Without such proof attached to the tax returns, any claim on account thereof shall be disallowed and the assessment of taxes shall correspondingly be made.

Section 7. Implementing Guidelines. —

A. Duties and Obligations –

1. Nonresident Alien Individual Not Engaged in Trade or Business within the Philippines or Nonresident Foreign Corporation shall:

    a) Maintain a record of the transactions which shall contain date of the transaction, name of the seller, Tax Identification Number of the sellers, if available, and amount received by the seller.

    b) Require the seller to sign an order slip or any similar document to evidence the amount received by the seller. This document shall be the basis of the Revenue Officers in recording the transaction and assessing the correct tax due.

2. Owners and operators of hotels, inns, or establishments where the alien individuals or foreign corporation buyers conduct the subject transaction are required to advise in writing the Revenue District Office which has jurisdiction over the place where the subject transactions are held *immediately after having acquired knowledge of the buying event*:

    a) Name of the alien individuals and/or entity;
    b) Nationality;
    c) Passport Number;
    d) Intended number of days of staying in the hotel, inns or establishments;
    e) Place, date and time of the buying event; and

f) Tax Identification Number of the nonresident alien or nonresident foreign corporation, if already registered.

Owners and operators of hotels, inns, or establishments who shall fail to inform or notify the BIR of the above mentioned information shall be subject to appropriate penalties imposed under Section 275 and other pertinent provisions of the Tax Code."

B. Tax Enforcement.-

Based on the information received and gathered, the RDO shall recommend the issuance by the Regional Director of Mission Order/s to the Special Investigation Division (SID) and Revenue Collection Officers (RCOs) for the whole duration of the subject transaction who shall be in-charge of physically checking compliance of the sellers of his obligations imposed herein and checking whether advance payment of business and income taxes and actual payment of excise tax have been duly made.

The RCOs of the RDO having jurisdiction over the place where the subject transactions are held shall, on the spot, collect the taxes on every sale transaction made on the site. Receipt of payment for advance business and income taxes prescribed herein shall be evidenced by duly validated payment forms (BIR Form No. 0605) while receipt of payments for excise tax shall be evidenced by Excise Tax Return (BIR Form No. 2200M). In all cases, the RCOs shall issue the corresponding RORs.

Moreover, the RCO's shall prepare a report on the advance payment for every tax type per taxpayer and excise tax returns filed. This report shall be submitted to the RDO, with a copy furnished to the Regional Director, immediately after the buying event.

The SID Officers assigned shall ascertain whether or not the alien individual or foreign corporation is engaged in trade or business in the Philippines. If they are determined not to be engaged in trade or business, then they shall be covered by these Regulations.

The SID Officers shall likewise prepare reports indicating therein:

a) The name of the nonresident individual and/or the nonresident foreign corporation:
b) Their transactions made in the Philippines;
c) Their period of stay in the Philippines;

d) Profile of the nonresident individual and/or nonresident foreign corporation; and
e) Compliance with the provisions of these Regulations.

An Official Registry Book (ORB) shall be maintained by the SID Officers conducting the surveillance to ensure that the transactions are properly recorded.

Reports submitted by the SID officers and RCOs shall be reconciled and tallied by the Regional Director within five (5) days from the buying event. A final report by the Regional Director shall then be submitted to the Commissioner of Internal Revenue within five (5) days from the receipt of the aforementioned reports.

The SID Officers/RCOs shall likewise be in-charge of establishing a profile of those sellers of jewelry, gold and other metallic minerals who are not registered with the Bureau. Their registrable business addresses must be obtained so that the identity of these taxpayers may be endorsed to the appropriate RDO which shall take the appropriate action to ensure registration and the collection of the appropriate fees and taxes due from them.

Section 8. Repealing Clause. —

All existing rules, regulations and other issuances, or portions thereof, that are inconsistent with the provisions hereof are hereby modified, repealed or revoked accordingly.

Section 9. Effectivity Clause. —

The provisions of these Regulations shall take effect immediately.

(Original Signed)
CESAR V. PURISIMA
Secretary of Finance

Recommending Approval:

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