

目次

SECTION 2.57. Withholding of Tax at Source.....	3
SECTION 2.57.1. Income Payments Subject to Final Withholding Tax.....	4
SECTION 2.57.2. Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.....	12
SECTION 2.57.3. Persons Required to Deduct and Withhold.	17
SECTION 2.57.4. Time of Withholding.....	17
SECTION 2.57.5. Exemption from Withholding.	18
SECTION 2.58. Returns and Payment of Taxes Withheld at Source.....	18
SECTION 2.58.1. Income of Recipient.	20
SECTION 2.58.2. Registration with the Register of Deeds.	20
SECTION 2.58.3. Claim for Tax Credit or Refund.	20
SECTION 2.58.4. Verification of Returns and Statement.....	21
SECTION 2.58.5. Requirement for Deductibility.	21
SECTION 2.58.6. Tax Paid by Recipient of Income.	22
SECTION 2.78. Withholding Tax on Compensation.....	22
SECTION 2.78.1. Withholding of Income Tax on Compensation Income.....	22
SECTION 2.78.2. Payroll Period.....	30
SECTION 2.78.3. Employee.....	30
SECTION 2.78.4. Employer.	31
SECTION 2.79. Income Tax Collected at Source on Compensation Income.	33
SECTION 2.79.1. Application for Registration for Individuals Earning Compensation Income (BIR Form No. 1902).....	45
SECTION 2.79.2. Failure to File Application for Registration (Form No. 1902 or Exemption Certificate).....	48

SECTION 2.79.3. Withholding on the Basis of Average Compensation.....	48
SECTION 2.79.4. Husband and Wife.	48
SECTION 2.79.5. Non-Resident Aliens.....	49
SECTION 2.79.6. Year-End Adjustment.....	49
SECTION 2.80. Liability for Tax.....	49
SECTION 2.81. Filing of Return and Payment of Income Tax Withheld on Compensation (Form No. 1601).....	52
SECTION 2.82. Return and Payment in Case Where the Government is the Employer.....	52
SECTION 2.83. Statement and Returns.....	53
SECTION 2.83.1. Employees Withholding Statements (BIR Form No. 2316).	53
SECTION 2.83.2. Annual Information Return of Income Tax Withheld on Compensation (Form No. 1604, Formerly Form No. 1743IR).	53
SECTION 2.83.3. Requirement for Income Payees List.	54
SECTION 2.83.4. Filing of Income Tax Returns by Employees Receiving Purely Compensation Income.	54
SECTION 2.83.5. Registration as Withholding Agent.....	55
SECTION 2.83.6. Applicability of Constructive Receipt of Compensation.....	55
SECTION 2.83.7. Extension of Time for Furnishing Statements to Employee.	56
SECTION 4.114. Withholding of Creditable Value-Added Tax.....	56
SECTION 5.116. Withholding of Percentage Tax —	58
REPEALING CLAUSE. —	62
EFFECTIVITY. —	62

Withholding Tax RR- 2-98

April 17, 1998

REVENUE REGULATIONS NO. 02-98

SUBJECT : Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes

TO : All Internal Revenue Officers and Others Concerned

Pursuant to Sec. 244 of the National Internal Revenue Code, as amended, in relation to Sections 57 to 59, Sections 78 to 83, Section 114(C) and Sections, 116 to 127 of Republic Act 8424, these regulations are hereby promulgated which shall govern the collection at source on income paid on or after January 1, 1998 and prescribing the Revised Withholding Tax Tables on compensation.

SECTION 2.57. Withholding of Tax at Source

(A) Final Withholding Tax.

Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.

The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax.

(B) Creditable Withholding Tax.

Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income. Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these

regulations) are creditable in nature.

SECTION 2.57.1. Income Payments Subject to Final Withholding Tax.

The following forms of income shall be subject to final withholding tax at the rates herein specified;

(A) Income payments to a citizen or to a resident alien individual;

- (1) Interest from any peso bank deposit, and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements; royalties (except on books as well as other literary works and musical compositions), prizes (except prizes amounting to ten thousand pesos (P10,000.00) or less which shall be subject to tax under Sec. 24 (A) of the Code) and other winnings (except Philippine Charity Sweepstakes winnings and lotto winnings) derived from sources within the Philippines Twenty percent (20%).
- (2) Royalties on books, as well as other literary works and musical compositions Ten percent (10%).
- (3) Interest income received by a resident individual taxpayer from a depository bank under the Foreign Currency Deposit System Seven and one-half percent (7.5%).
- (4) Interest income from long-term deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form prescribed by the Bangko Sentral ng Pilipinas which was pre-terminated by the holder before the fifth (5th) year at the rates herein prescribed to be deducted and withheld from the proceeds thereof based on the length of time that the instrument was held by the taxpayer
Holding Period Rate
Four (4) years to less than five (5) years 5%
Three (3) years to less than four (4) years 12%
Less than three (3) years 20%
- (5) Cash and/or property dividends actually or constructively received from a domestic corporation, joint stock company, insurance or mutual fund companies or on the share of an individual partner in the distributable net income after tax of a partnership (except general professional partnership) or on the share of an individual in the net income after tax of an association, a joint account or a joint venture or consortium of which he is a member or a co-venturer.
6% - beginning January 1, 1998
8% - beginning January 1, 1999 and
10% - beginning January 1, 2000 and thereafter
The tax on cash and property dividends shall only be imposed on dividends which are declared from profits of corporations made after December 31, 1997.

- (6) On capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code (i.e. the authority of the Commissioner to prescribe the real property values), whichever is higher Six percent (6%).

In case of dispositions of real property made by individuals to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations, the tax to be imposed shall be determined either under Section 24(A) of the Code for normal income tax for individual citizens and residents or under Section 24(D)(1) of the Code for the final tax on capital gains from sale of property at six percent (6%), at the option of the taxpayer.

(B) Income Payment to Non-resident Aliens Engaged in Trade or Business in the Philippines.

The following forms of income derived from sources within the Philippines shall be subject to final withholding tax in the hands of a non-resident alien individual engaged in trade or business within the Philippines, based on the gross amount thereof and at the rates prescribed therefor:

- (1) On Certain Passive Income A tax of twenty (20%) percent is hereby imposed on certain passive income received from all sources within the Philippines.
- (a) Cash and/or property dividend from a domestic corporation or from a joint stock company, or from an insurance or mutual fund company or from a regional operating headquarter of a multinational company;
 - (b) Share in the distributable net income after tax of a partnership (except general professional partnership) of which he is a partner, or share in the net income after tax of an association, a joint account, or a joint venture of which he is a member or a co-venturer;
 - (c) Interests from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements;
 - (d) Royalties (except royalties on books, as well as other literary works and musical compositions which shall be subject to 10% final withholding tax);
 - (e) Prizes (except prizes amounting to ten thousand pesos (P10,000.00) or less subject to tax under Sec. 25 (A) (1) of the Code for the normal rates of income tax for individuals) and other winnings (except Philippine Charity Sweepstakes winnings and lotto winnings);
- (2) Interest income derived from long-term deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form prescribed by the Bangko Sentral ng Pilipinas which was pre-terminated by the holder before the fifth (5th) year at the rates herein prescribed to be deducted and withheld from the proceeds thereof based on the length of time that the instrument was held by the taxpayer

Holding Period Rate

Four (4) years to less than five (5) years 5%

Three (3) years to less than four (4) years 12%

Less than three (3) years 20%

- (3) On capital gains presumed to have been realized from the sale exchange or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code (i.e. the authority of the Commissioner to prescribe zonal values), whichever is higher Six percent (6%).

In case of dispositions of real property made by individuals to government or any of its political subdivisions or agencies or to government-owned or controlled corporations, the tax to be imposed shall be determined either under Section 24(A) of the code for the normal rate of income tax for individual citizens and residents or under Section 24(D)(1) of the Code for the final tax on capital gains from sale of property at six percent (6%), at the option of the taxpayer.

(C) Income Derived from All Sources Within the Philippines by a Non-resident Alien Individual Not Engaged in Trade or Business Within the Philippines.

The following forms of income derived from all sources within the Philippines shall be subject to a final withholding tax in the hands of a non-resident alien individual not engaged in trade or business within the Philippines based on the following amounts and at the rates prescribed therefor:

- (4) On the gross amount of income derived from all sources within the Philippines by a non-resident alien individual who is not engaged in trade or business in the Philippines as interest, cash and/or property dividends, rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodic or casual gains, profits and income and capital gains Twenty five percent (25%).
- (5) On capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code (i.e. the authority of the Commissioner to prescribe the real property values), whichever is higher Six percent (6%).

In case of dispositions of real property made by individuals to government or any of its political subdivisions or agencies or to government-owned or controlled corporations, the tax to be imposed shall be determined either under Sec. 24(a) of the Code for the rates of income tax for individual citizens and residents or under Sec. 24(D)(1) of the Code for the final tax on capital gains from sale of property at six percent (6%), at the option of the taxpayer.

(D) Income Derived by Alien Individuals Employed by Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies.

A final withholding tax equivalent to fifteen percent (15%) shall be withheld by the withholding agent from the gross income received by every alien individual occupying managerial and technical positions in regional or area headquarters and regional operating headquarters and representative offices established in the Philippines by multinational companies as salaries, wages, annuities, compensation, remuneration, and other emoluments, such as honoraria and allowances, except income which is subject to the fringe benefits tax, from such regional or area headquarters and regional operating headquarters.

The same tax treatment shall apply to Filipinos employed and occupying the same as those of alien employed by these multinational companies.

The term "multinational company" means a foreign firm or entity engaged in international trade with its affiliates or subsidiaries or branch offices in the Asia Pacific Region and other foreign markets.

(E) Income Derived by Alien Individuals Employed by Offshore Banking Units.

A final withholding tax equivalent to fifteen (15%) shall be withheld by the withholding agent from the gross income of alien individuals occupying managerial or technical positions in offshore banking units established in the Philippines, as salaries, wages, annuities, compensations, remuneration and other emoluments such as honoraria and allowances, received from such offshore banking units.

The same tax treatment shall apply to Filipinos employed and occupying the same positions as those of aliens who are employed by these offshore banking units.

(F) Income of Aliens Employed by Foreign Petroleum Service Contractors and Subcontractors.

A final withholding tax equivalent to fifteen percent (15%) shall be withheld from the gross income of an alien individual who is a permanent resident of a foreign country but who is employed and assigned in the Philippines by a foreign service contractor or by a foreign service subcontractor who is engaged in petroleum operations in the Philippines. His gross income includes salaries, wages, annuities, compensation, remuneration and other emoluments, such as honoraria and allowances, received from such contractor or subcontractor.

The same tax treatment shall apply to Filipinos who are employed and occupying the same positions as those of aliens employed by a foreign petroleum service contractor or subcontractor.

(G) Income Payment to a Domestic Corporation.

The following items of income shall be subject to a final withholding tax in the hands of a domestic corporation, based on the gross amount thereof and at the rate of tax prescribed therefor:

- (1) Interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements derived from sources within the Philippines Twenty Percent (20%).
- (2) Royalties derived from sources within the Philippines Twenty percent (20%).

- (3) Interest income derived from a depository bank under the Expanded Foreign Currency Deposit System, otherwise known as a Foreign Currency Deposit Unit (FCDU) Seven and one-half percent (7.5%).
- (4) Income derived by a depository bank under the Expanded Foreign Currency Deposit System from foreign transactions with local commercial banks including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with Foreign Currency Deposit System Units and other depository banks under the expanded foreign currency deposit system including interest income from foreign currency loans granted by such depository bank under the said expanded foreign currency deposit system to residents Ten percent (10%).
- (5) On capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines classified as capital assets, including pacto de retro sales and other forms of conditional sales based on the gross selling price or fair market value as determined in accordance with Sec. 6(E) of the Code, whichever is higher Six percent (6%).

(H) Income Payment to a Resident Foreign Corporation.

The following forms of income shall be subject to a final withholding tax in the hands of a foreign corporation, based on the gross amount thereof and at the rate of tax prescribed therefor:

- (1) Offshore Banking Units On income derived by offshore banking units authorized by the Bangko Sentral ng Pilipinas (BSP) from foreign currency transactions with local commercial banks and branches of foreign banks that may be authorized by the BSP to transact business with offshore banking units and other OBUs including interest income derived from foreign currency loans granted to resident Ten percent (10%).
- (2) Tax on Branch Profit Remittances On any profit remitted by the Philippine branch of a foreign corporation to its head office abroad based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof except those registered with the Philippine Economic Zones Authority (PEZA) and other companies within the special economic zones such as Subic Bay Metropolitan Authority (SBMA) and Clark Development Authority (CDA) Fifteen percent (15%).

Interests, dividends, rents, royalties (including remunerations for technical services), salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be considered as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

- (3) Interest on any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines Twenty percent (20%).
- (4) Interest income derived from a Depository Bank under the Expanded Foreign Currency Deposit system Seven and one-half percent (7.5%).
- (5) Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas to transact business with foreign currency deposit system units and other depository banks under the expanded foreign currency deposit system including interest income from foreign currency loans granted by such depository banks under the said expanded foreign currency deposit system to resident Ten percent (10%).

(I) Income Derived From all Sources Within the Philippines by Non- Resident Foreign Corporation.

The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefor:

- (1) In general On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) at the following rates:
 - 34% - beginning January 1, 1998
 - 33% - beginning January 1, 1999 and
 - 32% - beginning January 1, 2000 and thereafter
- (2) Gross income from all sources within the Philippines derived by non-resident cinematographic film owners, lessors or distributors Twenty five percent (25%).
- (3) On the gross rentals, lease and charter fees, derived by non-resident owner or lessor of vessels from leases or charters to Filipino citizens or corporations as approved by the Maritime Industry Authority Four and one-half percent (4.5%).
- (4) On the gross rentals, charter and other fees derived by non-resident lessor of aircraft, machineries and other equipment Seven and a half percent (7.5%).
- (5) Interest on foreign loans contracted on or after August 1, 1986 Twenty percent (20%).
- (6) Dividends received from a domestic corporation Fifteen percent (15%) of the cash and/or property dividends received from a domestic corporation subject to the condition that the country in which the nonresident foreign corporation is domiciled (a) shall allow a credit against

the tax due from the said nonresident foreign corporation which are equivalent to taxes deemed to have been paid in the Philippines equal to twenty percent (20%) for 1997, nineteen percent (19%) for 1998, eighteen percent (18%) for 1999 and seventeen percent (17%) thereafter, which represents the difference between the regular income tax of thirty-five percent (35%) in 1997, thirty four percent (34%) in 1998, thirty three percent (33%) in 1999, and thirty two percent (32%) thereafter on corporations and the fifteen percent (15%) tax on dividends as herein provided; or, (b) does not impose any income tax on dividends received from a domestic corporation.

(J) Fringe Benefits Granted to the Employee (Except Rank and File Employee).

There shall be imposed a final tax of 34% beginning January 1, 1998; 33% beginning January 1, 1999 and 32% beginning January 1, 2000 and thereafter, on the grossed-up monetary value of fringe benefits, granted or furnished by the employer to his employees (except rank and file as defined in the Code). Fringe benefits however, which are required by the nature of or necessary to the trade, business or profession of the employer, or where such fringe benefit is for the convenience and advantage of the employer shall not be subject to the fringe benefits tax.

The term fringe benefit means any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees) such as but not limited to, the following:

- (1) Housing;
- (2) Expense account;
- (3) Vehicle of any kind;
- (4) Household personnel, such as maid, driver and others;
- (5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
- (6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
- (7) Expenses for foreign travel;
- (8) Holiday and vacation expenses;
- (9) Educational assistance to the employee or his dependents; and
- (10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

Fringe benefits granted to the following employees and taxable under Sec. 25 (B), (C), (D) and (E) shall also be subject to the fringe benefit tax to wit:

Sec. 25(B) Non-resident alien individual not engaged in trade or business in the Philippines.

Sec. 25(C) Alien individual employed by regional or area headquarters and regional operating

headquarters of a multinational company, including any of its Filipino employees employed and occupying the same position as those of its aforesaid alien employees;

Sec. 25(D) Alien individual employed by an offshore banking unit of a foreign bank established in the Philippines, including any of its Filipino employees employed and occupying the same position as those of its aforesaid alien employees;

Sec. 25(E) Alien individual employed by a foreign service contractor and subcontractor engaged in petroleum operations in the Philippines, including any of its Filipino employees employed and occupying the same position as those of its aforesaid alien employees.

The computation and the scheme for withholding the tax on fringe benefits shall be governed by such revenue orders that the Commissioner shall issue as guidelines and clarifications for its proper and consistent implementation.

(K) Informer's Reward to Persons Instrumental in the Discovery of Violations of the National Internal Revenue Code and the Discovery and Seizure of Smuggled Goods.

The following rewards shall be subject to a final withholding tax at the rate of ten percent (10%):

- (1) Those given to persons, except an internal revenue official or employee, or other public official or employee or his relative within the sixth degree of consanguinity, who voluntarily gives definite and sworn information not yet in the possession of the BIR, leading to the discovery of frauds upon the Internal Revenue Laws or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or imposition of any fine or penalty.
- (2) Those given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner and collected from the offender.

The amount of reward shall be equivalent to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or one million pesos (P1,000,000.00) per case whichever is lower.

The reward shall be paid under the rules and regulations issued by the Secretary of Finance, upon the recommendation of the Commissioner. However, such person shall not be entitled to a reward, should no revenue, surcharges or fees be actually recovered or collected nor shall apply to a case already pending or previously investigated or examined by the Commissioner or any of his deputies or agents or examiners, or the Secretary of Finance or any of his deputies or agents.

- (3) Those given to persons instrumental in the discovery and seizure of such smuggled goods.

The amount of reward shall be equivalent to ten percent of the market value of the smuggled and confiscated goods or one million pesos (P1,000,000.00) per case whichever is lower.

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 Ten percent (10%);

- (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;
- (2) Professional entertainers such as but not limited to actors and actresses, singers and emcees;
- (3) Professional athletes including basketball players, pelotaris and jockeys;
- (4) All directors 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 recipients 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.

The amounts subject to withholding under this paragraph shall include not only fees, but also per diems, allowances and any other form of income payments. In the case of professional entertainers, athletes, and all recipient of talent fees, the amount subject to withholding tax shall also include amounts paid to them in consideration for the use of their names or pictures in print, broadcast, or other media or for public appearances, for purposes of advertisements or sales promotion.

(B) Professional fees, talent fees, etc. for services of taxable juridical persons

On the gross professional, promotional and talents fees, or any other form of remuneration enumerated in the preceding subparagraph for the services of taxable juridical persons Five percent (5%).

(C) Rentals

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

(D) Cinematographic film rentals and other payments

On gross payments to resident individuals and corporate cinematographic film owners, lessors or distributors Five percent (5%).

(E) Income payments to certain contractors

On gross payments to the following contractors, whether individual or corporate One percent (1%).

- (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.

(F) Income distribution to the beneficiaries.

On income distributed to the beneficiaries of estates and trust as determined under Sec. 60 of the Code, except such income subject to final withholding tax and tax exempt income Fifteen percent (15%);

(G) Income payments to certain brokers and agents.

On gross commissions of customs, insurance, real estate and commercial brokers and fees of agents of professional entertainers Five percent (5%);

(H) Income payments to partners of general professional partnerships.

Income payments made periodically or at the end of the taxable year by a general professional partnership to the partners, such as drawings, advances, sharings, allowances, stipends, etc. Ten percent (10%);

(I) Professional fees paid to medical practitioners.

Any amount collected for and paid to medical practitioners by hospitals and clinics or paid by patients to the medical practitioners through the hospital or clinic Ten percent (10%);

(J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of .

Real property, other than capital assets, sold by an individual, corporation, estate, trust, trust fund or pension fund and the seller/transferor is habitually engaged in the real estate business in accordance with the following schedule

Those which are exempt from a withholding tax at source as prescribed in Sec. 2.57.5 of these regulations Exempt

With a selling price of five hundred thousand pesos (P500,000.00) or less 1.5%

With a selling price of more than five hundred thousand pesos (P500,000.00) but not more than two million pesos (P2,000,000.00) 3.0%

With selling price of more than two million pesos (P2,000,000.00) 5.0%

A seller/transferor must show proof of registration with HLURB or HUDCC to be considered as habitually engaged in the real estate business.

Real property, other than capital asset, by an individual, estate, trust, trust fund or pension fund or by a corporation who is not habitually engaged in the real estate business Seven and one-half percent (7.5%).

Gross selling price shall mean the consideration stated in the sales document or the fair market value determined in accordance with Section 6 (E) of the Code, as amended, whichever is higher. In an exchange, the fair market value of the property received in exchange, as determined in the Income Tax Regulations shall be used.

Where the consideration or part thereof is payable on installment, no withholding of tax is required to be made on the periodic installment payments where the buyer is an individual not engaged in trade or business. In such a case, the applicable rate of tax based on the entire consideration shall be withheld on the last installment or installments to be paid to the seller.

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, the tax shall be deducted and withheld by the buyer on every installment.

(K) Additional income payments to government personnel from importers, shipping and airline companies, or their agents.

On gross additional payments by importers, shipping and airline companies, or their agents to government personnel for overtime services as authorized by law Fifteen percent (15%);

For this purpose, the importers, shipping and airline companies or their agents, shall be the withholding agents of the Government;

(L) Certain income payments made by credit card companies.

On the gross amounts paid by any credit card company in the Philippines to any business entity, whether a natural or juridical person, representing the sales of goods/services made by the aforesaid business entity to cardholders One half percent (1/2%);

(M) Income payments made by the top five thousand (5,000) corporations.

Income payments made by any of the top five thousand (5,000) corporations, as determined by the Commissioner, to their local supplier of goods One percent (1%);

- (1) The term "goods" pertains to tangible personal property. It does not include intangible personal property as well as real property.

- (2) The term "local suppliers of goods" pertains to a supplier from whom any of the top five thousand (5,000) corporations, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not include a casual purchase of goods, that is, purchases made from non-regular suppliers and oftentimes involving single purchases. However, a single purchase which involves one hundred thousand pesos (P100,000.00) or more shall be subject to a withholding tax.
- (3) A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly notified in writing by the Commissioner that it has been selected as one of the top five thousand (5,000) corporations.
- (4) The withholding agent shall submit on a semestral basis a list of its regular suppliers of goods to the Revenue District Office (RDO) having jurisdiction over the withholding agent's principal place of business on or before July 31 and January 31 of each year.

(N) Income payments by government.

Income payments, except any single purchase which is P10,000 and below, which are made by a government office, national or local, including government-owned or controlled corporations, on their purchases of goods from local suppliers One percent (1%);

A government-owned or controlled corporation which is listed as one of the top five thousand (5,000) corporations shall withhold the tax in its capacity as a government-owned or controlled corporation rather than as one of the top five thousand (5,000) corporations.

SECTION 2.57.3. Persons Required to Deduct and Withhold.

The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:

(A) In general, any juridical person, whether or not engaged in trade or business;

(B) An individual, with respect to payments made in connection with his trade or business.

However, insofar as taxable sale, exchange or transfer of real property is concerned, individual buyers who are not engaged in trade or business are also constituted as withholding agents;

(C) All government offices including government-owned or controlled corporations, as well as provincial, city and municipal governments.

SECTION 2.57.4. Time of Withholding.

The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term "payable" refers to the date the obligation become due, demandable or legally enforceable.

SECTION 2.57.5. Exemption from Withholding.

The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

(A) National government and its instrumentalities, including provincial, city or municipal governments;

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

- (1)** Sales of real property by a corporation which is registered with and certified by the Housing and Land Use Regulatory Board (HLURB) or HUDCC as engaged in socialized housing project where the selling price of the house and lot or only the lot does not exceed one hundred eighty thousand pesos (P180,000) in Metro Manila and other highly urbanized areas and one hundred fifty thousand pesos (P150,000) in other areas or such adjusted amount of selling price for socialized housing as may later be determined and adopted by the HLURB, as provided under Republic Act No. 7279 and its implementing regulations;
- (2)** Corporations registered with the Board of Investments and enjoying exemption from the income tax provided by Republic Act No. 7916 and the Omnibus Investment Code of 1987;
- (3)** Corporations which are exempt from the income tax under Sec. 30 of the NIRC, to wit: the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR); However, the income payments arising from any activity which is conducted for profit or income derived from real or personal property shall be subject to a withholding tax as prescribed in these regulations.

SECTION 2.58. Returns and Payment of Taxes Withheld at Source.

(A) Monthly return and payment of taxes withheld at source

- (1) WHERE TO FILE** Creditable and final withholding taxes deducted and withheld by the withholding agent shall be paid upon filing a return in duplicate with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the residence or

principal place of business of the withholding agent. In places where there is no authorized agent banks, the return shall be filed directly with the Revenue District Officer, Collection Officer or the duly authorized Treasurer of the city or municipality where the withholding agent's residence or principal place of business is located, or where the withholding agent is a corporation, where the principal office is located except in cases where the Commissioner otherwise permits.

(2) WHEN TO FILE

(a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year.

(b) For large taxpayers, the filing of the return and the payment of tax shall be made within twenty five (25) days after the end of each month.

(c) The return for final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements shall be filed and the payment made within twenty five (25) days from the close of each calendar quarter.

(B) Withholding tax statement for taxes withheld

Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year. Dctai

(C) Annual information return for income tax withheld at source.

The payor is required to file with the Commissioner, Revenue Regional Director, Revenue District Officer, Collection Agent in the city or municipality where the payor has his legal residence or principal place of business, where the government office is located in the case of a government agency, on or before January 31 of the following year in which payments were made, an Annual Information Return of Income Tax Withheld at Source (Form No. 1604), showing among others the following information:

- (1) Name, address and taxpayer's, identification number (TIN); and
- (2) Nature of income payments, gross amount and amount of tax withheld from each payee and such other information as may be required by the Commissioner.

If the payor is the Government of the Philippines or any political subdivision or agency thereof, or any government-owned or controlled corporation, the return shall be made by the officer or employee having control of the payments or by any designated officer or employee.

SECTION 2.58.1. Income of Recipient.

Income upon which any creditable tax is required to be withheld at source shall be included in the return of its recipient. The excess of the withheld tax over the tax due on his return shall be refunded to him subject to the authority of the Commissioner to refund taxes under Sec. 204 of the NIRC. If the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Sec. 56 of the Code.

The taxes withheld by the withholding agents shall be maintained in separate accounts and should not be commingled with any other funds of the withholding agent. They shall be considered as a trust fund held for government until they are remitted.

SECTION 2.58.2. Registration with the Register of Deeds.

Deeds of conveyances of land or land and building/improvement thereon arising from sales, barter, or exchanges subject to the creditable expanded withholding tax shall not be recorded by the Register of Deeds unless the Commissioner or his duly authorized representative has certified that such transfers and conveyances have been reported and the expanded withholding tax, inclusive of the documentary stamp tax, due thereon have been fully paid, pursuant to the provisions of Sections 57 and 196 of the Code, respectively.

The Register of Deeds shall annotate on the Transfer Certificate of Title of the said property such information required under Section 58 (E) of the Code. In case of any violation of the said requirement, he shall be liable to the penalties provided under Section 269 of the said Code.

SECTION 2.58.3. Claim for Tax Credit or Refund.

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Proof of remittance is the responsibility of the withholding agent.

(C) Excess Credits

An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

- (1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.
- (2) Sample computation of application of excess credits-ordinary

Taxable Period

1997 1998-QTR1 1998-QTR2 1998-QTR3

Tax Due 1,000 200 200 500

Less: Tax

Withheld (1,500) (500) (300) 0

Net Tax

Payable/

Creditable (500) (300) (100) 500

In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is initiated in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit of P500 in 1997.

SECTION 2.58.4. Verification of Returns and Statement.

Any return, statement or other documents required to be filed under these Regulations shall contain a written declaration that it is made under penalties of perjury and such declaration shall be under oath. It shall be the duty of tax officials to accept the income tax return or other documents submitted under oath.

SECTION 2.58.5. Requirement for Deductibility.

Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.

A deduction will also be allowed in the following cases where no withholding of tax was made: LexLib

(A) The payee reported the income and the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of the original audit and investigation;

(B) The recipient/payee failed to report the income on the due date thereof, but the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax and surcharges, if applicable, at the time of the original audit and investigation;

(C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, at the time of the original audit and investigation.

SECTION 2.58.6. Tax Paid by Recipient of Income.

Every person who is required to withhold the tax from the compensation of an employee is liable for the payment of such tax to the BIR. Such liability stays even if the employee subsequently pays the tax. The payment of the tax by the employee does not relieve the employer from the liability for penalties and/or additions to the tax for failure to deduct and withhold within the time prescribed by law or regulations. The employer will not be relieved of his liability for payment of the tax required to be withheld unless he can show that the tax has been paid by the employee. The amount of any tax withheld/collected by the employer is a special fund in trust for the government of the Philippines.

SECTION 2.78. Withholding Tax on Compensation.

The withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent.

SECTION 2.78.1. Withholding of Income Tax on Compensation Income.

(A) Compensation Income Defined.

In general, the term "compensation" means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code.

The name by which the remuneration for services is designated is immaterial. Thus, salaries, 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 Sec. 33 of the Code; taxable pensions and retirement pay; and other income of a similar nature constitute compensation income.

The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes compensation. Thus, it may be paid on the basis of piece-work, or a percentage of profits; and may be paid hourly, daily, weekly, monthly or annually.

Remuneration for services constitutes compensation even if the relationship of employer and employee does not exist any longer at the time when payment is made between the person in whose employ the services had been performed and the individual who performed them.

- (1) Compensation paid in kind. Compensation may be paid in money or in some medium other than money, as for example, stocks, bonds or other forms of property. If services are paid for in a medium other than money, the fair market value of the thing taken in payment is the amount to be included as compensation subject to withholding. If the services are rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair market value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time the services were rendered.
- (2) Living quarters or meals. If a person receives a salary as remuneration for services rendered, and in addition thereto, living quarters or meals are provided, the value to such person of the quarters and meals so furnished shall be added to the remuneration paid for the purpose of determining the amount of compensation subject to withholding. However, if living quarters or meals are furnished to an employee for the convenience of the employer, the value thereof need not be included as part of compensation income.
- (3) Facilities and privileges of a relatively small value. Ordinarily, facilities and privileges (such as entertainment, medical services, or so called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as compensation subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment,

or efficiency of his employees.

Where compensation is paid in property other than money, the employer shall make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment to the Commissioner.

- (4) Tips and gratuities. Tips or gratuities paid directly to an employee by a customer of the employer which are not accounted for by the employee to the employer are considered as taxable income but not subject to withholding.
- (5) Pensions, retirement and separation pay. Pensions, retirement and separation pay constitute compensation subject to withholding, except those provided under Subsection B of this section.
- (6) Fixed or variable transportation, representation and other allowances
 - (a) IN GENERAL, fixed or variable transportation, representation and other allowances which are received by a public officer or employee or officer or employee of a private entity, in addition to the regular compensation fixed for his position or office, is compensation subject to withholding.
 - (b) Any amount paid specifically, either as advances or reimbursements for travelling, representation and other bonafide ordinary and necessary expenses incurred or reasonably expected to be incurred by the employee in the performance of his duties are not compensation subject to withholding, if the following conditions are satisfied:
 - (i) It is for ordinary and necessary travelling and representation or entertainment expenses paid or incurred by the employee in the pursuit of the trade, business or profession; and
 - (ii) The employee is required to account/liquidate for the foregoing expenses in accordance with the specific requirements of substantiation for each category of expenses pursuant to Sec. 34 of the Code. The excess of actual expenses over advances made shall constitute taxable income if such amount is not returned to the employer. Reasonable amounts of reimbursements/ advances for travelling and entertainment expenses which are pre-computed on a daily basis and are paid to an employee while he is on an assignment or duty need not be subject to the requirement of substantiation and to withholding.
- (7) Vacation and sick leave allowances. Amounts of "vacation allowances or sick leave credits" which are paid to an employee constitute compensation. Thus, the salary of an employee on vacation or on sick leave, which are paid notwithstanding his absence from work, constitutes compensation. However, the monetized value of unutilized vacation leave credits of ten (10) days or less which were paid to the employee during the year are not subject to income tax and to the withholding tax.
- (8) Deductions made by employer from compensation of employee. Any amount which is required by law to be deducted by the employer from the compensation of an employee

including the withheld tax is considered as part of the employee's compensation and is deemed to be paid to the employee as compensation at the time the deduction is made.

- (9) Remuneration for services as employee of a nonresident alien individual or foreign entity. The term "compensation" includes remuneration for services performed by an employee of a nonresident alien individual, foreign partnership or foreign corporation, whether or not such alien individual or foreign entity is engaged in trade or business within the Philippines. Any person paying compensation on behalf of a non-resident alien individual, foreign partnership, or foreign corporation which is not engaged in trade or business within the Philippines is subject to all provisions of law and regulations applicable to an employer.
- (10) Compensation for services performed outside the Philippines. Remuneration for services performed outside the Philippines by a resident citizen for a domestic or a resident foreign corporation or partnership, or for a non-resident corporation or partnership, or for a non-resident individual not engaged in trade or business in the Philippines shall be treated as compensation which is subject to tax.

A non-resident citizen as defined in these regulations is taxable only on income derived from sources within the Philippines. In general, the situs of the income whether within or without the Philippines, is determined by the place where the service is rendered.

(B) Exemptions from withholding tax on compensation.

The following income payments are exempted from the requirement of withholding tax on compensation:

- (1) Remunerations received as an incident of employment, as follows:
 - (a) Retirement benefits received under Republic Act under 7641 and those received by officials and employees of private firms, whether individual or corporate, under a reasonable private benefit plan maintained by the employer which meet the following requirements:
 - (i) The plan must be reasonable;
 - (ii) The benefit plan must be approved by the Bureau;
 - (iii) The retiring official or employee must have been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of retirement; and
 - (iv) The retiring official or employee should not have previously availed of the privilege under the retirement benefit plan of the same or another employer.
 - (b) Any amount received by an official or employee or by his heirs from the employer due to death, sickness or other physical disability or for any cause beyond the control of the said

official or employee, such as retrenchment, redundancy, or cessation of business. rep
The phrase "for any cause beyond the control of the said official or employee" connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be asked for or initiated by him. The separation was not of his own making. Whether or not the separation is beyond the control of the official or employee, being essentially a question of fact, shall be determined on the basis of prevailing facts and circumstances. It shall be duly established by the employer by competent evidence which should be attached to the monthly return for the period in which the amount paid due to the involuntary separation was made.

Amounts received by reason of involuntary separation remain exempt from income tax even if the official or the employee, at the time of separation, had rendered less than ten (10) years of service and/or is below fifty (50) years of age.

Any payment made by an employer to an employee on account of dismissal, constitutes compensation regardless of whether the employer is legally bound by contract, statute, or otherwise, to make such payment.

- (c) Social security benefits, retirement gratuities, pensions and other similar benefits received by residents or non-resident citizens of the Philippines or aliens who come to reside permanently in the Philippines from foreign government agencies and other institutions private or public;
 - (d) Payments of benefits due or to become due to any person residing in the Philippines under the law of the United States administered by the United States Veterans Administration;
 - (e) Payments of benefits made under the Social Security System Act of 1954 as amended; and
 - (f) Benefits received from the GSIS Act of 1937, as amended, and the retirement gratuity received by government officials and employees.
- (2) Remuneration paid for agricultural labor
- (a) Remuneration for services which constitute agricultural labor and paid entirely in products of the farm where the labor is performed is not subject to withholding. In general, however, the term, "agricultural labor" does not include services performed in connection with forestry, lumbering or landscaping.
 - (b) Remuneration paid entirely in products of the farm where the labor is performed by an employee of any person in connection with any of the following activities is excepted as remuneration for agricultural labor:
 - (i) The cultivation of soil;
 - (ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, or wildlife; or
 - (iii) The raising or harvesting of any other agricultural or horticultural commodity. The term "farm" as used in this subsection includes, but is not limited to stock, dairy, poultry,

fruits and truck farms, plantations, ranches, nurseries ranges, orchards, and such greenhouse and other similar structures as are used primarily for the raising of agricultural or horticultural commodities.

- (c) The remuneration paid entirely in products of the farm where labor is performed for the following services in the employ of the owner or tenant or other operator of one or more farms is not considered as remuneration for agricultural labor, provided the major part of such services is performed on a farm:

- (i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any such farms or its tools or equipments; or

- (ii) Services performed in salvaging timber, or clearing land brush and other debris left by a hurricane or typhoon.

The services described in (i) above may include for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semi-skilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged. Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to remuneration paid for services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

- (d) Remuneration paid entirely in products of the farm where labor is performed by an employee in the employ of any person in connection with any of the following operations is not considered as remuneration for agricultural labor without regard to the place where such services are performed:

- (i) The making of copra, stripping of abaca, etc.;

- (ii) The hatching of poultry;

- (iii) The raising of fish;

- (iv) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes; and

- (v) The production or harvesting of crude gum from a living tree or the processing of such crude gum into gum spirits or turpentine and gum resin, provided such processing is carried on by the original producer of such crude gum.

- (e) Remuneration paid entirely in products of the farm where labor is performed by an employee in the employ of a farmer or a farmer's cooperative, organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to carrier for transportation to market, of any agricultural or horticultural commodity, produced by such farmer or farmer-members of

such organization or group, is excepted as remuneration for agricultural labor. Services performed by employees of such farmer or farmer's organization or group in handling, planting, drying, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to carrier for transportation to market of commodities produced by persons other than such farmer or members of such farmer's organization or group are not performed "as an incident to ordinary farming operation".

All payments made in cash or other forms other than products of the farm where labor is performed, for services constituting agricultural labor as explained above, are not within the exception.

- (3) Remuneration for domestic services. Remuneration paid for services of a household nature performed by an employee in or about the private home of the person by whom he is employed is not subject to withholding. However, the services of household personnel furnished to an employee (except rank and file employees) by an employer shall be subject to the fringe benefits tax pursuant to Sec. 33 of the Code, as amended.

A private home is the fixed place of abode of an individual or family. If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home and remuneration paid for services performed therein is not exempted.

In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, gardeners, chauffeurs of automobiles for family use.

The remuneration paid for the services above enumerated which are performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals or commercial offices or establishments is considered as compensation;

Remuneration paid for services performed as a private secretary, even if they are performed in the employer's home is considered as compensation;

- (4) Remuneration for casual labor not in the course of an employer's trade or business. The term "casual labor" includes labor which is occasional, incidental or irregular. The expression "not in the course of the employer's trade or business" includes labor that does not promote or advance the trade or business of the employer.

Thus, any remuneration paid for labor which is occasional, incidental or irregular, and does not promote or advance the employer's trade or business, is not considered as compensation.

EXAMPLE: A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B's work is irregular and he spends, the greater part of two days in completing the work. Since B's labor is casual and is not in the course of A's business, the remuneration paid for such services is exempted.

Any remuneration paid for casual labor, that is, labor which is occasional, incidental or irregular,

but which is rendered in the course of the employer's trade or business, is considered as compensation.

EXAMPLE: E is engaged in the business of operating a department store. He employs additional clerks for a short period. While the services of the clerks may be casual, they are rendered in the course of the employer's trade or business and therefore the remuneration paid for such services is considered as compensation.

Any remuneration paid for casual labor performed for a corporation is considered as compensation;

- (5) Compensation for services by a citizen or resident of the Philippines for a foreign government or an international organization. Remuneration paid for services performed as an employee of a foreign government or an international organization is exempted. The exemption includes not only remuneration paid for services performed by ambassadors, ministers and other diplomatic officers and employees but also remuneration paid for services performed as consular or other officer or employee of a foreign government or as a non-diplomatic representative of such government.
- (6) Damages. Actual, moral, exemplary and nominal damages received by an employee or his heirs pursuant to a final judgment or compromise agreement arising out of or related to an employer-employee relationship.
- (7) Life Insurance. The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, provided however, that interest payments agreed under the policy for the amounts which are held by the insured under such an agreement shall be included in the gross income.
- (8) Amount received by the insured as a return of premium. The amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.
- (9) Compensation for injuries or sickness. Amounts received through Accident or Health Insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness.
- (10) Income exempt under treaty. Income of any kind to the extent required by any treaty obligation binding upon the Government of the Philippines.
- (11) Thirteenth (13th) month pay and other benefits.
 - (a) Thirteenth (13th) month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the government, (whether national or local), including government-owned or controlled corporations, and or private offices received after the twelfth (12th) month pay; and

- (b) Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gifts in cash or in kind and other benefits of similar nature actually received by officials and employees of both government and private offices.

The above stated exclusions (a) and (b) shall cover benefits paid or accrued during the year provided that the total amount shall not exceed thirty thousand pesos (P30,000.00) which may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

- (12) GSIS, SSS, Medicare and other contributions. GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees.

SECTION 2.78.2. Payroll Period.

The term "payroll period" means the period of services for which a payment of compensation is ordinarily made to an employee by his employer. It is immaterial that the compensation is not always paid at regular intervals.

EXAMPLE: if an employer ordinarily pays the weekly wages of his employees at the end of the week, but if for some reason a particular employee receives payment of his salaries for the past week in the middle of the current week and receives the remainder at the end of the same week, the payroll period is still the calendar week; or if, instead, the employee is sent on a three (3)-week trip by his employer and receives at the end of the trip a single compensation payment for three (3)-week services, the payroll period is still the calendar week, and the compensation payment shall be treated as though it were three (3) separate weekly compensation payments.

For the purpose of determining the tax, an employee can have but one payroll period with respect to the compensation paid by any one employer. Thus, if an employee is paid a regular compensation for the weekly payroll and in addition thereto is paid supplemental compensation (for example taxable bonuses) determined with respect to a different period, the payroll period is the weekly payroll period.

SECTION 2.78.3. Employee.

The term "employee" is an individual performing services under an employer-employee relationship. The term covers all employees, including officers and employees, whether elected or appointed, of the Government of the Philippines, or any political subdivision thereof or any agency or instrumentality.

In general, the relationship of the employer and employee exists when the person for whom services were performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result

is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done, but how it shall be done. In this connection, it is not necessary that the employer actually directs or controls the manner in which the services are performed. It is sufficient that he has the right to do so.

The right to dismiss an employee is also an important factor indicating that the person possessing that right is an employer. Other factors or characteristics of an employer, which may not be necessarily present in every case, are furnishing the tools and furnishing of a place to work, to the individual who performs the services. In general, an individual is not considered an employee if he is subject to the control or direction of another merely on to the result to be accomplished by the work, and not on to the means and methods for accomplishing the result.

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

The measurement, method or designation of compensation is also immaterial if the relationship of employer and employee in fact exists.

No distinction is made between classes or grades of employees. Thus superintendents, managers, and others belonging to similar levels are employees. An officer of a corporation is an employee of the corporation. An individual, performing services for a corporation, both as an officer and director, is an employee subject to withholding on compensation, including director's fees.

SECTION 2.78.4. Employer.

The term employer means any person for whom an individual performs or performed any service, of whatever nature, under an employer-employee relationship. It is not necessary that the services be continuing at the time the wages are paid in order that the status of employer may exist. Thus for purposes of withholding, a person for whom an individual has performed past services and from whom he is still receiving compensation is an "employee".

(A) Person for whom the services are or were performed does not have control.

The term "employer" also refers to the person having control of the payment of the compensation in cases where the services are or were performed for a person who does not exercise such control. For example, where compensation, such as certain types of pensions or retirement pay, are paid by a trust and the person for whom the services were performed has no control over the payment of such compensation, the trust is deemed to be the "employer".

(B) Person paying compensation on behalf of a nonresident.

The term "employer" also means any person paying compensation on behalf of a non-resident alien individual, foreign partnership, or foreign corporation, who is not engaged in trade or business within the Philippines.

It is the responsibility of the employer to withhold, pay, or refund the tax and furnish the statements required under these Regulations. The term "employer" as defined in (A) and (B) above is intended to determine who is the withholding agent.

As a matter of business administration, certain mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of a corporate employer with branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required under the law. Nevertheless, the legal responsibility for withholding, paying and returning the tax and furnishing such statements rests with the corporate employer.

An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

The term "employer" embraces not only an individual and an organization engaged in trade or business, but it also includes an organization exempt from income tax, such as charitable and religious organizations, clubs, social organizations and societies, as well as the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions.

(C) Compensation paid on behalf of two or more employers.

If a payment of compensation is made to an employee by an employer through an agent, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays the compensation payable by another employer to such employee, the amount of tax required to be withheld on each compensation payment made through such agent, fiduciary, or person shall, whether the compensation is paid separately on behalf of each employer or paid in lump-sum on behalf of all such employers, be determined based on the aggregate amount of such compensation payment or payments in the same manner as if such aggregate amount had been paid by one employer. Hence, the tax shall be determined based on the aggregate amount of the compensation paid.

In any such case, each employer shall be liable for the return and payment of a pro-rata portion of the tax so determined in accordance with the ratio of the amount contributed by each employer relative to the aggregate of such compensation.

A fiduciary, agent, or other person acting for two or more employers may be authorized to withhold the tax under these regulations with respect to the wages of the employees of such employers. Such fiduciary, agent, or other person may also be authorized to make and file returns of the tax withheld at source on such compensation and to furnish the receipts required under these Regulations. Application for the authorization to perform such act should be addressed to the Commissioner or his duly authorized representative. If such authority is granted by the Commissioner, all provisions of the law (including penalties) and regulations prescribed in pursuance of the law applicable in respect of an employer for whom such fiduciary, agent or other person acts shall remain subject to all provisions of law (including penalties) and regulations prescribed in pursuance of the law applicable in respect of employers.

SECTION 2.79. Income Tax Collected at Source on Compensation Income.

(A) Requirement of Withholding.

Every employer must withhold from compensations paid, an amount computed in accordance with these regulations. Provided, that no withholding of tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage or five thousand pesos (P5,000.00) monthly (sixty thousand pesos (P60,000.00) a year), whichever is higher.

Employees whose total annual compensation, as determined in the preceding paragraph, does not exceed P60,000.00 shall be given two options with which to pay his income tax due to wit:

- (1) His compensation income shall be subjected to withholding tax, but he shall not be required to file the income tax return prescribed in Sec. 51 of the Code (filing of an individual return) except when covered by any of the situations enumerated in Sec. 2.83.4 of these Regulations.
- (2) His compensation income shall not be subject to a withholding tax but he shall file his annual income tax return and pay the tax due thereon, annually.

Where the employee has opted to have his compensation income subjected to withholding so as to be relieved of the obligation of filing an annual income tax return and paying his tax due on a lump sum basis, he shall execute a waiver in a prescribed BIR form of his exemption from withholding which shall constitute the authority for the employer to apply the withholding tax table provided under these Regulations.

The employee who opts to file the Income Tax Return shall file the same not later than April 15 of the year immediately following the taxable year.

(B) Computation of Withholding Tax on Compensation Income in General.

The procedures provided herein below shall govern the computation of withholding tax on the taxable compensation income of the employees. Provided, however, that taxable fringe benefits received by employees other than the rank and file, as defined in the Labor Code of the Philippines, as amended, shall be subject to a Fringe Benefits Tax, instead of the rates prescribed in the Withholding Tax Tables pursuant to Sec. 24(A) of the Code, as amended (refer to Sec. 2.79.D of these Regulations).

- (1) Use of Withholding Tax Tables. In general, every employer making payment of compensation shall deduct and withhold from such compensation a tax determined in accordance with the prescribed new withholding tax tables effective January 1, 1998 (Annex A) of these Regulations. There are four (4) withholding tables prescribed in these regulations, as follows:
 - (a) Monthly Tax Table to be used by employers using the monthly payroll period;
 - (b) Semi-Monthly Tax Table to be used by employers using the semi-monthly payroll period;
 - (c) Weekly Tax Table to be used by employers using the weekly payroll period;
 - (d) Daily Tax Table to be used by employers using the daily payroll period.

If the compensation is paid other than daily, weekly, semi-monthly or monthly, the tax to be withheld shall be computed as follows:

- (a) Annually use the annualized computation referred to in Sec. 2.79 (B)(5)(b) of these Regulations;
 - (b) Quarterly and semi-annually divide the compensation by three (3) or six (6), respectively, to determine the average monthly compensation. Use the monthly withholding tax table to compute the tax, and the tax so computed shall be multiplied by three (3) or six (6) accordingly.
- (2) Components of the Withholding Tax Table.
 - (a) Each tax table is grouped into Tables A, B and C.
 - A Table for employees without dependent children
 - B Table for heads of family with dependent children
 - C Table for married employees with qualified dependent children
 - (b) The columns in the Tables reflect the following:
 - 1st column reflects the exemption status of employee represented by letter symbols. (refer to the explanation of the legend of symbols in letter (d) below)
 - 2nd column reflects the total amount of personal and additional exemption, in pesos, to which an employee is entitled.

(c) Column numbers 1 to 10 reflect the portion of the amount of taxes to be withheld on the amount of compensation of the employees. Every amount in all the columns within Tables A, B and C represent the compensation level.

(d) Legend of symbols The symbols used in the new withholding tax table represent the following:

Z Zero exemption for (a) employee with multiple employers simultaneously, with respect to second, third, etc., employer and (b) for employee who fails to file an application for registration (BIR Form 1902) or an exemption certificate; (BIR Form 2305)

S Single, legally separated spouses/widow/widower without any qualified dependent; pr

ME Married employee who is not legally separated;

HF Head of the family who is either single/legally separated spouse/widow or widower with a qualified dependent parent; sister or brother; legitimate, recognized natural or legally adopted child; or a qualified senior citizen as defined by these regulations pursuant to Sec. 2 of R.A. No. 7432.

In view however, of the promulgation of the Family Code which makes no distinction between the spurious and natural child, an illegitimate child can now be considered as a qualified dependent and qualifies the claimant to the status of head of the family.

The numerals (1-4) affixed to the status symbols "ME" and HF" represent the number of qualified legitimate, illegitimate, or legally adopted children;

Exemption means the amount of exemption in thousand pesos an employee is entitled to claim as a deduction from gross compensation income in accordance with the status and number of qualified dependent children.

(3) Steps to determine the amount of tax to be withheld:

Step 1. Use the appropriate tables for the payroll period; monthly semi-monthly weekly or daily as the case may be.

Step 2. Determine the total monetary and non-monetary compensation paid to an employee for the payroll period, segregating gross benefits which includes thirteenth (13th) month pay, productivity incentives, Christmas bonus, and other benefits received by the employee per payroll period. Gross benefits which are received by officials and employees of public and private entities in the amount of thirty thousand pesos (P30,000) or less shall be exempted from income tax and from withholding tax.

Step 3. Segregate the taxable compensation from the non-taxable income paid to the employee for the payroll period. The taxable income refers to all remuneration paid to an employee not otherwise exempted by law from income tax and consequently from withholding tax. The non-

taxable income are those which are specifically exempted from income tax by the Code or by other special laws as listed in Sec. 2.78.1 (B) of these Regulations (e.g. benefits not exceeding P30,000, non-taxable retirement benefits and separation pay).

Step 4. Segregate the taxable compensation income as determined in Step 3 into regular taxable compensation income and supplementary compensation income. Regular compensation includes basic salary, fixed allowances for representation, transportation and other allowances paid to an employee per payroll period. Supplementary compensation includes payments to an employee in addition to the regular compensation such as commission, overtime pay, taxable retirement pay, taxable bonus and other taxable benefits, with or without regard to a payroll period.

Step 5. Fix the compensation level as follows:

- (i) Determine the line (horizontal) corresponding to the status and number of qualified dependent children using the appropriate symbol for the taxpayer status.
- (ii) Determine the column to be used by taking into account only the total amount of taxable regular compensation income. The compensation level is the amount indicated in the line and column to which the regular compensation income is equal to or in excess, but not to exceed the amount in the next column of the same line.

Step 6. Compute the withholding tax due by adding the tax predetermined in the compensation level indicated at the top of the column, to the tax on the excess of the total regular and supplementary compensation over the compensation level, which is computed by multiplying the excess by the rate also indicated at the top of the same column.

(4) Sample Computations on the use of the Withholding Tax Table: (samples deleted)

(5) Use of Exceptional Computations

- (a) Cumulative average method. If in respect of a particular employee, the regular compensation is exempt from withholding because the amount thereof is below the compensation level, but supplementary compensation is paid during the calendar year; or the supplementary compensation is equal to or more than the regular compensation to be paid; or the employee was newly hired and had a previous employer/s within the calendar year, other than the present employer doing this cumulative computation, the present employer shall determine the tax to be deducted and withheld in accordance with the cumulative average method provided hereunder:

Step 1. Add the amount of taxable regular and supplementary compensation to be paid to

an employee for the payroll period subject of computation to the sum of the taxable regular and supplementary compensation since the beginning of the current calendar year including the compensation paid by the previous employers within the same calendar year, if any;

Step 2. Divide the aggregate amount of compensation computed in step 1 by the number of payroll period to which the amount relates;

Step 3. Compute the tax to be deducted and withheld on the cumulative average compensation determined in Step No. (2) in accordance with the withholding tax table;

Step 4. Multiply the tax computed in Step No. (3) by the number of payroll period to which it relates;

Step 5. Determine the excess, if any, of the amount of tax computed in Step No. (4) over the total amount of tax already deducted and withheld from the beginning payroll period to the last payroll period, including that withheld by the previous employer/s within the calendar year, if any. The excess, as computed, shall be deducted and withheld from the compensation to be paid for the last payroll period of the current calendar year.

The cumulative average method, once applicable to a particular employee at any time during the calendar year, shall be the same method to be consistently used for the remaining payroll period/s of the same calendar year.

- (b) Annualized withholding tax method. (i) When the employer-employee relationship is terminated before the end of the calendar year; and (ii) when computing for the year-end adjustment, the employer shall determine the amount to be withheld from the compensation on the last month of employment or in December of the current calendar year in accordance with the following procedures:

Step 1. Determine the taxable regular and supplementary compensation paid to the employee for the entire calendar year. Refer to Steps 2 to 5 of Sec. 2.79 (B)(1)(b) of these Regulations, using as basis the compensation received for the calendar year.

Step 2. If the employee has previous employment/s within the year, add the amount of taxable regular and supplementary compensation paid to the employee by the

previous employer doing the annualized computation to the taxable compensation income received from previous employer/s during the calendar year:

(i) When the employer-employee relationship is terminated before December The taxable regular and supplementary compensation income shall be the amount paid since the beginning of the current calendar year to the termination of employment.

(ii) Year-end adjustment The taxable regular and supplementary compensation income shall be the amount paid since the beginning of the current calendar year to December.

(iii) Taxable fringe benefits received by employees holding managerial or supervisory positions shall be subject to a final fringe benefit tax as prescribed in Section 2.79 (D) of these Regulations. Hence, the same shall not form part of the taxable supplementary compensation, of managers and supervisors, subject to the withholding tax tables.

Step 3. Deduct from the aggregate amount of compensation computed in Step No. (2) the amount of the total personal and additional exemptions of the employee.

Step 4. Deduct the amount of premium payments on Health and/or Hospitalization Insurance of employees who have presented evidence that they have paid during the taxable year premium payments (the deductible amount shall not exceed P2,400 or P200 per month whichever is lower) and that their family's total gross income does not exceed P250,000 for the calendar year. For purposes of substantiating the claim of insurance expense, the policy contract shall be presented to the employer together with the original official receipt of the premium payment, in addition to the documents which will be prescribed by the BIR in a separate regulation to determine the aggregate of his family income.

Total family income includes primary income and other income from sources received by all members of the nuclear family, i.e. father, mother, unmarried children living together as one household, or a single parent with children. A single person living alone is considered as a nuclear family.

The spouse claiming the additional exemptions for the qualified dependent children shall be the same spouse to claim the deductions for premium payments.

Step 5. Compute the amount of tax on the difference arrived at in Step 4, in

accordance with the schedule provided in Sec. 24 (A) of the Code, as follows:

Over But Not Amount Rate Of Excess

Over Over

not over 10,000 5%

10,000 30,000 500+10% 10,000

30,000 70,000 2,500+15% 30,000

70,000 140,000 8,500+20% 70,000

140,000 250,000 22,500+25% 140,000

250,000 500,000 50,000+30% 250,000

500,000 over 125,000+34% 500,000

(33% in 1999)

(32% in 2000 and thereafter)

Step 6. Determine the deficiency or excess, if any, of the tax computed in Step 5 over the cumulative tax already deducted and withheld since the beginning of the current calendar year. The deficiency tax (when the amount of tax computed in Step 5 is greater than the amount of cumulative tax already deducted and withheld or when no tax has been withheld from the beginning of the calendar year) shall be deducted from the last payment of compensation for the calendar year. If the deficiency tax is more than the amount of last compensation to be paid to an employee, the employer shall be liable to pay the amount of tax which cannot be collected from the employee. The obligation of the employee to the employer arising from the payment by the latter of the amount of tax which cannot be collected from the compensation of the employee is a matter of settlement between the employee and employer.

The excess tax (when the amount of cumulative tax already deducted and withheld is greater than the tax computed in Step 5) shall be credited or refunded to the employee not later than January 25 of the following year. However, in case of termination of employment before December, the refund shall be given to the employee at the payment of the last compensation during the year. In return, the employer is entitled to deduct the amount refunded from the remittable amount of taxes withheld from compensation income in the current month in which the refund was made, and in the succeeding months thereafter until the amount refunded by the employer is fully repaid.

The annualized computation done for each employee shall be reflected by the employer at the alphabetical list attached to the Form No. 1604.

- (6) If the compensation is paid other than daily, weekly, semi-monthly or monthly, compute the tax to be deducted and withheld as follows:
- (a) Annually refers to computation on annualized income;
 - (b) Quarterly and semi-annually divide the compensation by three (3) or six (6), respectively, to determine the average monthly compensation. Use the monthly withholding tax table to compute the tax, and the tax so computed shall be multiplied by three (3) or six (6), accordingly; LLjur
 - (c) Bi-weekly divide the compensation by two (2) to determine the average weekly compensation. Use the weekly withholding tax table to compute the tax, and the tax so computed shall be multiplied by two (2);
 - (d) Miscellaneous if compensation is paid irregularly, or for a period other than those mentioned above, divide the compensation by the number of days from last payment to date of payment (excluding Sundays and holidays). Use the daily tax table, the tax so computed shall be multiplied by the number of days.

(C) Computation of Withholding Tax on Salaries and Benefits Received by Employees other than rank and file.

The procedures provided herein below shall govern the computation of withholding tax on the taxable compensation income of employees other than the rank and file pursuant to Sec. 2.79 (B) of these regulations.

- (1) Determine the total monetary and non-monetary compensation, segregating gross benefits which includes thirteenth (13th) month pay, productivity incentives, Christmas bonus and fringe benefits received by the employee per payroll period. When computing under the annualized computation, the total monetary and non-monetary compensation shall be that received for the calendar year. Gross benefits received by officials and employees of public and private entities shall be exempted from income tax and from withholding tax; provided that the amount of exemption shall not exceed thirty thousand pesos (P30,000); ll
- (2) Segregate the taxable from the non-taxable compensation (excluding the fringe benefits) paid to the employee. The taxable income refers to all remuneration paid to an employee not otherwise exempted by law from income tax and consequently from withholding tax. The non-taxable income are those which are specifically exempted from income tax by the Code or other special laws as listed in Sec. 2.78.1 (B) of these Regulations (e.g. benefits not exceeding P30,000, non-taxable retirement benefits and separation pay);
- (3) Segregate the taxable fringe benefit and subject the same to withholding pursuant to Subsection D of these section of the Regulations;

- (4) Compute withholding tax on the taxable regular and supplementary compensation in accordance with the procedures prescribed in Sec. 2.79(B)(1)(b) of these regulations, for purposes of withholding per payroll period; and Sec. 2.79(B)(2) for purposes of computing under the cumulative average method or for the year-end adjustment.

(D) Computation of Withholding Tax on Fringe Benefit.

- (1) Final withholding tax on Fringe Benefits paid to employees other than rank and file. There shall be imposed a final tax of 34% beginning January 1, 1998, 33% beginning January 1, 1999 and 32% beginning January 1, 2000 and thereafter, on the grossed-up monetary value of fringe benefits pursuant to Sec. 33 of the Code and its implementing regulations, granted or furnished by the employer to his employees (except rank and file employees) unless the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer, and when the fringe benefit is for the convenience and advantage of the employer.

The fringe benefit tax shall be paid by the employer in the same manner as provided in Sec. 2.58 of these Regulations. It shall not form part of the gross income of the employee. The imposition of the fringe benefits tax should be the subject of a separate set of rules and regulations which shall be issued for the purpose.

- (2) Grossed-up monetary value of Fringe Benefit.

- (a) In general the grossed-up monetary value of the fringe benefit shall be determined by dividing the monetary value of the fringe benefit by sixty six percent (66%) in 1998; sixty seven percent (67%) in 1999; and sixty eight percent (68%) in 2000 and thereafter.

- (b) The grossed-up monetary value of fringe benefits furnished to employees and which are taxable under subsections B, C, D, and E of Section 25 of the Code shall be determined by dividing the monetary value of the fringe benefit by the difference between one hundred percent (100%) and the applicable rates of income tax prescribed on the aforesaid sub-sections of Section 25, to wit:

Subsection (B) Twenty-five percent on income derived from sources within the Philippines by a non-resident alien individual not engaged in trade or business in the Philippines.

Subsection (C) Fifteen percent (15%) on income of an alien individual employed by regional or area headquarters of a multinational company or regional operating headquarters of a multinational company, including any of its Filipino employees employed and occupying the same position as those of its aforesaid alien employees.

Subsection (D) Fifteen percent (15%) on income of an alien individual employed by an offshore banking unit of a foreign bank established in the Philippines, including any of its Filipino employees employed and occupying the same position as those of its aforesaid alien employees.

Subsection (E) Fifteen percent (15%) on the income of an alien individual employed by a foreign service subcontractor engaged in petroleum operations in the Philippines, including any of its Filipino employees employed and occupying the same position as those of its aforesaid alien employees.

(3) Non-taxable Fringe Benefits. The following fringe benefits are not subject to the fringe benefits tax.

- (a) Fringe benefits paid to rank and file employees. Fringe benefits furnished or granted to rank and file employees shall form part of the employees gross compensation income subject to the withholding tax table on compensation under Section 2.79 (B) of these Regulations.
- (b) Fringe benefits which are authorized and exempted from income tax and consequently from withholding tax under the Code, as amended, or under any special law.
- (c) Contributions of the employer for the benefit of the employee to retirement, insurance and hospitalization benefit plans.
- (d) De minimis benefits. For purposes of determining whether the fringe benefit shall be considered payments of de minimis benefits, the employer shall submit a written representation to the Commissioner for the issuance of a ruling taking into account the peculiar nature and special need of the said employer's trade, business or profession. The term "de minimis benefits" which is exempt from the fringe benefit tax shall, in general, be limited to facilities or privileges (such as entertainment, Christmas party and other cases similar thereto; medical and dental services; or the so-called courtesy discount on purchases), furnished or offered by an employer to his employees, provided such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.

(E) Computation of Withholding Tax on Compensation Paid to Alien Employees of Certain Employers.

There shall be imposed a final withholding tax of fifteen percent (15%) on the salaries, annuities, compensation, remuneration and other emoluments such as honoraria and allowances paid to its alien employees occupying managerial and technical positions and Filipino employees occupying similar positions by the following employers:

- (1)** Area or regional headquarters of multinational corporations and regional operating headquarters under Sec. 25 (C);
- (2)** Offshore banking units under Sec. 25 (D) and FCDO;
- (3)** Petroleum service contractors and sub-contractors under Sec. 25 (E) of the Code.

(F) Requirement for Deductibility.

The provisions of Sec. 2.58.5 of these Regulations shall apply.

(G) Tax Paid by Recipient.

The provisions of Sec. 2.58.6 of these Regulations shall apply.

(H) Non-deductibility of Tax and Credit for Tax Withheld.

The tax deducted and withheld at source on compensation income shall neither be allowed as a deduction from the employer's gross income nor from the recipient's gross compensation income. The entire amount of the compensation from which the tax is withheld shall be included in gross income to be reported in the return required to be made by the recipient of the income without deduction for such tax. The creditable tax withheld at source, however, is allowable as a credit against the tax imposed by the NIRC to the recipient of the income. Any excess of the tax withheld at source, over the tax ascertained to be due on the income tax return shall be refunded or automatically credited, at the taxpayer's option, to the recipient of the income. Such refund or credit shall be without prejudice to whatever adjustments may be proper after field investigation or upon information relative to the taxpayer's income tax liability under the main provisions of the Code, as amended. If the tax has actually been withheld at source, a credit or a refund shall be made to the recipient of the income even though such withheld tax has not been paid to the government by the employer. For the purpose of the credit, the recipient of the income is the person subject to tax, on whose compensation the tax was withheld.

Any excess of the tax which was withheld on compensation over the tax due from the taxpayer shall be returned not later than July 15 of the following year. Refunds made after such time shall earn interest at the rate of six percent (6%) per annum, starting after the lapse of the three month period up to the date when the refund is made.

Refunds shall be made upon warrants drawn by the Commissioner or by his authorized representative without the necessity of counter-signature by the Chairman, Commission on Audit or the latter's duly authorized representative as an exception to the requirement prescribed by Section 49, Chapter 8, Subtitle B, Title I of Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

(I) Right to claim Withholding Exemptions.

An employee receiving compensation shall be entitled to withholding exemptions as provided in the Code, as amended. In order to receive the benefit of such exemptions, the employee must file the Application for Registration (BIR Form No. 1902), upon employment and a Withholding Compensation and Exemption Certificate (Form No. 2305), in case of updates on changes in his exemptions. The withholding exemptions to which an employee is entitled depends upon his status as

single, married, head of the family and the number of dependents qualified for additional exemptions. Each employee shall be allowed to claim the following amount of exemptions, with respect to compensation paid on or after January 1, 1998.

(J) Personal and additional exemptions.

(a) Basic personal exemptions.

(i) For single individual or married individual judicially decreed as legally separated with no qualified dependents, the amount of personal exemption allowed is twenty thousand pesos (P20,000.00);

(ii) For each legally married employee, the amount of personal exemption allowed is thirty two thousand pesos (P32,000.00). A married individual deriving income within the Philippines whose spouse is unemployed or is a non-resident citizen deriving income from foreign sources, shall be entitled to a personal exemption of thirty two thousand pesos (P32,000.00) only;

(iii) For head of a family, the amount of personal exemption allowed is twenty five thousand pesos (P25,000.00). Head of the family means an unmarried or legally separated man or woman with one or both parents or one or more brothers or sisters whether of the whole or half blood or with one or more legitimate or illegitimate, recognized natural or legally adopted children living with and dependent upon him for their chief support, where such brothers or sisters or children are not more than twenty one (21) years of age, unmarried and not gainfully employed or where such children, brothers, or sisters, regardless of age are incapable of self-support because of mental or physical defect. The term also includes an unmarried or legally separated man or woman who is the benefactor of a qualified senior citizen.

A senior citizen is any resident citizen of the Philippines of at least sixty (60) years old, including those who have retired from both government offices and private enterprises, and has an income of not more than Sixty thousand pesos (P60,000) per annum subject to the review of the National Economic Development Authority (NEDA) every three years (definition taken from Republic Act No. 7432).

(b) Additional exemptions for taxpayer with dependents. A married individual or a head of family shall be allowed an additional exemption of eight thousand pesos (P8,000) for each qualified dependent child, provided that the total number of dependents for which additional exemptions may be claimed shall not exceed four (4) dependents. The additional exemptions for qualified dependent children shall be claimed by only one of the spouses in the case of married individuals.

A dependent means a legitimate, illegitimate or legally adopted child chiefly dependent upon and living with the taxpayer if such dependent is not more than twenty-one (21)

years of age, unmarried and not gainfully employed or if such dependent, regardless of age, is incapable of self-support because of mental or physical defect.

The husband shall be the proper claimant of the additional exemption for qualified dependent children unless he explicitly waives his right in favor of his wife in the application for registration (BIR Form 1902) or in the withholding exemption certificate (BIR Form 2305). Provided, however, that where the spouse of the employee is unemployed or is a non-resident citizen deriving income from foreign sources, the employed spouse within the Philippines shall be automatically entitled to claim the additional exemptions for children.

SECTION 2.79.1. Application for Registration for Individuals Earning Compensation Income (BIR Form No. 1902).

The application for registration of employees shall be accomplished by both employer and employee relating to the following information and other requirements:

(A) Employee.

- (1)** Name/Taxpayer's Identification Number (TIN)/Address of employee/other information required by the form;
- (2)** Status of employee whether SINGLE/legally separated/widow or widower with no dependent child, married, or head of the family;
- (3)** Status of spouse of the employee. If the employee is legally married, the Name/TIN, if any, of the spouse and whether said spouse is employed, unemployed, employed abroad, or is engaged in trade or business should be indicated on the application;
- (4)** Qualified dependents. Name and date of birth of qualified dependent/s (children, parent/s, brother/s, sister/s or senior citizens);
- (5)** Claimant of exemption for children. The husband is the proper claimant of additional exemptions for qualified children. However, the wife shall claim full additional exemption for children in the following cases:
 - (a) Husband is unemployed;
 - (b) Husband is a non-resident citizen deriving income from foreign sources;
 - (c) The husband waives his right to claim the exemptions of children (waiver should be for all children) in a sworn statement to be attached to his application form for registration (1902) and that of his wife's, in accordance with the procedures prescribed in this Section;
- (6)** Required forms and attachments. Upon filing the Application for registration (BIR Form No. 1902), the taxpayer is required to attach any of the following documents to establish the status of the taxpayer, if applicable, to the application:
 - (a) Marriage contract;

- (b) Court decision of legal separation;
 - (c) Birth Certificate of each qualified dependent brother, sister or child;
 - (d) Certificate of employment of the husband if he is working abroad;
 - (e) Waiver of exemptions of children by the husband in case wife is claiming the additional exemptions of the children;
 - (f) Waiver from exemption on withholding tax of taxpayers whose total compensation income in a year does not exceed P60,000.00.
 - (g) Medical Certificate of dependent brother, sister or child, if physically or mentally incapacitated;
 - (h) Court decision of legal adoption of children;
 - (i) Death certificate;
 - (j) Current certificate of income tax exemption of qualified senior citizen;
 - (k) Other documentary evidence, where the above documents are not available.
- (7) Concurrent multiple employments.** An employee who is employed concurrently by two or more employers within the same period of time during the taxable year shall file the Application (BIR Form No. 1902) with his main employer (employer paying the higher/est wage) and shall furnish a copy of the duly received Application with his secondary employers (2nd, 3rd, etc. employers). The employed husband and wife shall each file a separate application with their respective employers;
- (8) Successive multiple employment.** An employee who transferred to another employer during the taxable year, shall furnish his new Employer with an Exemption Certificate (Form No. 2305) indicating therein his previous employments during the taxable year (name of employer/s, address/s, TIN/s and the date/s of his separation) and attach to the said certificate, a copy of the Certificate of Income Tax Withheld on Compensation (BIR Form No. 2316) for the calendar year issued by previous employer/s;
- (9) Mixed income.** An individual receiving a combination of compensation and business/professional income shall first deduct the allowable personal and additional exemptions from compensation income only the excess therefrom can be deducted, from business or professional income. In the case of husband and wife, the husband shall be the proper claimant of the exemptions unless he waives it in favor of his wife.

(B) Employer.

The employer with whom the employee's Application for Registration (Form No. 1902) is filed, must indicate the date of receipt thereon and accomplish Part V of the said Application pertaining to Employer's Information such as TIN, Employer's Registered Name, and other relevant information.

(C) Procedures for the filing of the Application (Form No. 1902)

- (1) All employers shall require their employees to accomplish in duplicate the Application for Registration described above as follows:
 - (a) All employees who have not filed the Application for Registration (BIR Form 1902), as of December 31, 1997, shall accomplish and file the application with their employers not later than April 30, 1998;
 - (b) New employees shall accomplish and file the Application within ten (10) days from the date of commencement of employment;
 - (c) In case of changes in the information data in the Application (BIR Form 1902) previously submitted by the employee, consisting of changes in personal and additional exemptions, employment/working status of the spouse of the employee, multiple employment status and amount of compensation income, an Exemption Certificate (BIR Form 2305) reflecting the changes, together with the required documents/evidence of changes must be submitted to the employer within ten (10) days after such change. The employer shall then make the necessary adjustments on the withholding tax of the employee based on the new information;
- (2) The employer shall transmit both the original and duplicate copies of the Application or Certificate (after accomplishing the portion for Employer's information of either forms) to the Revenue District Officer of the City or Municipality where the employer has his legal residence or place of business within thirty (30) days following its receipt from the employee. The duplicate copy duly stamped received by the BIR shall be given to the employee.
- (3) The employer shall review the exemptions of the employees and shall, in the computation of taxes required to be withheld on the compensation of employees, apply the correct and applicable exemptions as provided in these regulations.
- (4) In case the husband waives his right to claim the additional exemptions of children in favor of his wife, he shall accomplish a waiver form (BIR Form No. ____) in accordance with the following procedures:
 - (a) Fill up three (3) copies of the prescribed waiver form (BIR Form No. ____)
 - (b) Submit to his employer within ten (10) days from employment, together with the BIR Form 1902 said waiver form for acknowledgment in the space provided for that purpose.

The employer of the husband shall:

 - (i) After filling up the acknowledgment portion of the waiver form, retain the duplicate copy of the form and furnish the employee the original and triplicate copies for submission to the employer of the wife and for file of the employee, respectively.
 - (ii) Stop deductions of exemptions of children from the husband's compensation income starting the following month.

The employer of the wife shall:

Upon receipt of copy of the waiver form duly acknowledged by the employer of the

husband, start deducting exemptions of children from the wife's income on the month when the employer of the husband stopped deducting the exemptions of children from the husband's income.

- (c) The employed husband and wife shall apply the waiver in the computation of their respective taxable income in the income tax return required to be filed by them following the procedure for filing the waiver under Section 2.79.1 (C)(4) of these regulations, that is, the husband shall not deduct exemptions of children from his compensation income because he has waived the same (exemptions of children) in favor of his wife who will now deduct said exemptions from her income in computing her tax due.

Waiver exercised during the calendar year shall be made only once in a calendar year and shall take effect for the present calendar year and succeeding year/s until revoked by the husband. Any waiver/revocation of such waiver shall take effect only starting the succeeding calendar year. In no case should an employer of the wife deduct exemptions of children from the wife's income unless the waiver by the husband has been duly acknowledged by the employer of the husband.

SECTION 2.79.2. Failure to File Application for Registration (Form No. 1902 or Exemption Certificate).

Where an employee, in violation of these regulations either fails or refuses to file an Application for Registration (1902) together with the required attachments, the employer shall withhold the taxes prescribed under the Schedule for Zero Exemption of the Revised Withholding Tax Table effective January 1, 1998. In case of failure to file the Exemption Certificate (2305) together with the attachments, the employer shall withhold the taxes based on the reported personal exemptions existing prior to the change of status and without reflecting any change. Any refund or underwithholding that shall arise due to the violations shall be covered by the penalties prescribed in Section 80 of the NIRC, as amended (Liability for Tax).

SECTION 2.79.3. Withholding on the Basis of Average Compensation.

The employer may withhold the tax under the NIRC, as amended, on the basis of the employee's average estimated compensation, with the necessary adjustments, for any month/quarter/year.

SECTION 2.79.4. Husband and Wife.

Where both husband and wife are each recipients of compensation either from the same or different employers, taxes to be withheld shall be determined on the following basis:

- (A) The husband shall be deemed the proper claimant of the additional exemption in respect to any dependent children, unless he explicitly waives his right in favor of his wife in the application for registration or in the withholding exemption certificate. The waiver may be done any time during the

year.

(B) In general, taxes shall be withheld from the wages of the wife in accordance with the schedule for a married person without any qualified dependent.

SECTION 2.79.5. Non-Resident Aliens.

Compensation for services rendered in the Philippines paid to non-resident aliens engaged in trade or business shall be subject to withholding under these Regulations.

SECTION 2.79.6. Year-End Adjustment.

On or before the end of the calendar year, and prior to the payment of the compensation for the last payroll period, the employer shall determine the sum of the taxable regular and supplementary compensation paid to each employee for the entire year, including the last compensation to be paid and compute for the amount of income tax on the annualized gross compensation income; Provided however, that the taxable fringe benefits received by employees except those given to the rank and file shall be subject to a final fringe benefits tax.

SECTION 2.80. Liability for Tax.

(A) Employer.

- (1) In general, the employer shall be responsible for the withholding and remittance of the correct amount of tax required to be deducted and withheld from the compensation income of his employees. If the employer fails to withhold and remit the correct amount of tax, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable.
- (2) The employer who required to collect, account for and remit any tax imposed by the NIRC, as amended, who willfully fails to collect such tax, or account for and remit such tax or willfully assist in any manner to evade any payment thereof, shall in addition to other penalties, provided for in the Code, as amended, be liable, upon conviction, to a penalty equal to the amount of the tax not collected nor accounted for or remitted. Pr
- (3) Any employer/withholding agent who fails, or refuses to refund excess withholding tax not later than January 25 of the succeeding year shall, in addition to any penalties provided in Title X of the Code, as amended, be liable to a penalty equal to the total amount of refund which was not refunded to the employee resulting from any excess of the amount withheld over the tax actually due on their return.

(B) Employee.

Where an employee fails or refuses to file the withholding exemption certificate or willfully supplies false or inaccurate information thereunder after due written notice by the employer, the tax otherwise to be withheld by the employer shall be collected from him including penalties or additions to the tax from the due date of remittance until the date of payment. On the other hand, where the employee, after due written notice from the employer, willfully fails or refuses to file the application for registration OR the withholding exemption certificate or willfully supplies false and inaccurate information, the excess taxes withheld by the employer shall not be refunded to the employee but shall be forfeited in favor of the government.

(C) Additions to Tax.

- (1)** There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty five percent (25%) of the amount due, in the following cases:
 - (a) Failure to file any return and pay the tax due thereon as required under the provisions of the Code or these regulations on the date prescribed; or
 - (b) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
 - (c) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
 - (d) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of the Code or these regulations, or the full amount of tax due for which no return is required to be filed, or before the date prescribed for its payment; or
 - (e) In case of willful neglect to file the return within the period prescribed by the Code or regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud.
 - (f) The penalties imposed hereunder shall apply in the case of a deficiency tax assessment which has become final and executory but which is not paid within the time prescribed for payment. The interest shall be imposed on the total amount due, inclusive of the deficiency increments.
- (2)** Interest There shall be assessed and collected on any unpaid amount of tax, an interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed for payment until the amount is fully paid.
- (3)** Deficiency Interest Any deficiency in the basic tax due, as the term is defined in the Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

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If the withholding agent is the government or any of its agencies, political subdivisions, or

instrumentalities or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of tax shall be personally liable for the surcharge and interest imposed herein.

(D) Failure to File Certain Information Returns (Sec. 250 of the Code).

In the case of each failure to file an information return, statement or list, or keep any record, or supply any information required by this Code or by the Commissioner on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the Commissioner, be paid by the person failing to file, keep or supply the same, one thousand pesos (P1,000) for each such failure: Provided, however, That the aggregate amount to be imposed for all such failures during a calendar year shall not exceed twenty-five thousand pesos (P25,000).

(E) Specific Penalties.

Notwithstanding the penalties hereunder provided, the following violations may be extrajudicially settled through compromise pursuant to Sec. 204 of the Code.

- (1)** Failure to file return, supply correct and accurate information, pay tax, withhold and remit tax and refund excess tax withheld on compensation (Sec. 255 of the Code). Any person required under the Code, as amended, or by regulations to pay any tax, make a return, keep any record/s, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep any record/s, 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, shall in addition to the other penalties provided by law, upon conviction thereof, be fined not less than ten thousand pesos (P10,000) and imprisonment of not less than one (1) year but not more than the (10) years.
- (2)** Declarations under penalties of perjury (Sec. 267 of the Code). Any declaration, return and other statements required under the Code, as amended, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.
- (3)** Violation of withholding tax provision by a government officer (Sec. 272 of the Code). 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 corporation including the Central Bank who, under the provisions of the Code, as amended, or regulations promulgated thereunder, is charged with the duty to deduct and withhold any internal revenue tax and to remit the same in accordance with the provisions of the Code as

amended, and other laws shall be guilty of any offense herein below specified and upon conviction of each act or omission, be fined in a sum not less than five thousand pesos (P5,000) but not more than fifty thousand pesos (P50,000) or imprisoned for a term of not less than six months and one day but not more than two years, or both:

- (a) Those who fail or cause the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing regulations;
- (b) Those who fail or cause the failure to remit taxes deducted and withheld within the time prescribed by law, and implementing regulations; and
- (c) Those who fail or cause the failure to file a return or statement within the time prescribed, or render or furnish a false or fraudulent return or statement required under the withholding tax laws and regulations.
- (d) Violation of other provisions of the Code or regulations in general (Sec. 275 of the Code). A person who violates any provision of the Code, as amended, or any regulation, for which no specific penalty is provided by law shall, upon conviction for its act or omission, be fined in a sum of not more than one thousand pesos or imprisoned for a term of not more than six months, or both.

The specific schedule of penalties shall be provided in a separate regulation.

SECTION 2.81. Filing of Return and Payment of Income Tax Withheld on Compensation (Form No. 1601).

Every person required to deduct and withhold the tax on compensation shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employers legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 25 of the succeeding year; Provided, further, that large taxpayers as determined by the Commissioner shall remit taxes withheld on or before the 25th day of the following month. LibLex If the person required to withhold and pay the tax is a corporation, the return shall be made in the name of the corporation and shall be signed and verified by the president, vice-president, or authorized officers.

With respect to any tax required to be withheld by a fiduciary, the returns shall be made in the name of the individual, estate, or trust for which such fiduciary acts, and shall be signed and verified by such fiduciary. In the case of two or more joint fiduciaries the return shall be signed and verified by one of such fiduciaries.

SECTION 2.82. Return and Payment in Case Where the Government is the Employer.

If the Government of the Philippines, its political subdivision or any agency or instrumentality, as well as government-owned or controlled corporation is the employer, the returns of the tax may be made by the officer or employee having control of payment of compensation or other officer or employee appropriately designated for the purpose.

SECTION 2.83. Statement and Returns.

SECTION 2.83.1. Employees Withholding Statements (BIR Form No. 2316).

In general, every employer or other person who is required to deduct and withhold the tax on compensation and fringe benefits shall furnish every employee from whose compensation taxes have been withheld the Certificate of Income Tax Withheld on Compensation (Form No. 2316, formerly Form No. W-2) on or before January 31 of the succeeding calendar year, or if his employment is terminated before the close of such calendar year, on the day on which the last payment of compensation is made.

The employer shall furnish each employee with the original and duplicate copies of Form No. 2316 showing the name and address of the employer; employer's TIN; name and address of the employee; employee's TIN; amount of exemptions claimed; amount of premium payments on medical insurance not exceeding P2,400.00, if any; the sum of compensation paid including the non-taxable benefits; the amount of tax due; the amount of tax withheld during the calendar year and such other information as may be required. The statement must be signed by both the employer or other authorized officer and the employee, and shall contain a written declaration that it is made under the penalties of perjury. If the employer is the Government of the Philippines, its political subdivision, agency or instrumentality or government-owned or controlled corporation, the statement shall be signed by the duly designated officer or employee.

An extra copy of Form 2316 shall be furnished by the employee, duly certified by him, to his new employer.

SECTION 2.83.2. Annual Information Return of Income Tax Withheld on Compensation (Form No. 1604, Formerly Form No. 1743IR).

Every employer or other person required to deduct and withhold the tax shall, on or before January thirty-first of the succeeding year, file with either the Collection Agent or Authorized Municipal Treasurer or Revenue District Officer or Commissioner the Annual Information Return of Income Tax Withheld on Compensation (BIR Form No. 1604), to be submitted with an alphabetical list of employees, both in duplicate copies.

(A) The Annual Information Return of Income Tax Withheld on Compensation must show among others, the following:

(1) Withholding Agent's registered name, address and Taxpayer's Identification Number (TIN);

(B) The alphabetical list of employees must show the following:

- (1) Name and TIN of employees;
- (2) Gross compensation paid by present and previous employers for the calendar year;
- (3)
 - (a) Taxable 13th month pay/Other benefits for the rank and file employees
 - (b) Taxable fringe benefits for managerial employees
- (4) Non-taxable 13th month pay/Other benefits (Present employer)
- (5) Amount of exemptions;
- (6) Amount of premium payments on medical insurance not exceeding P2,400.00, if any;
- (7) Tax required to be withheld computed in accordance with Sec. 24(A) of the Code;
- (8) Tax withheld by all present employers for calendar year; and
- (9) Adjustment, if any.

(C) The alphabetical list of employees shall be prepared indicating among others, separate listings of the following:

- (1) Employees as of December 31 of the taxable year without previous employment during the year;
- (2) Employees as of December 31 of the taxable year with previous employment within the year;
- (3) Employees who were terminated prior to the year-end adjustment computation showing the month of termination/month of last payment of compensation during the year of termination; and
- (4) Alien employees subject to final withholding tax.

In cases where no information was provided by a previous employer, such fact should be annotated in Form 1604 and the present employer shall not be liable to any penalties.

SECTION 2.83.3. Requirement for Income Payees List.

In lieu of the manually prepared alphabetical list of employees and list of payees and income payments subject to creditable and final withholding taxes which are required to be attached as integral part of the Annual Return (Form No. 1604), the Withholding Agent may, at its option, submit computer-processed tapes or cassettes or diskettes, provided that the said list has been encoded in accordance with the formats prescribed by Form 1604.

SECTION 2.83.4. Filing of Income Tax Returns by Employees Receiving Purely Compensation Income.

Individual taxpayers receiving purely compensation income from Philippine sources which does not exceed an aggregate amount of P60,000 for the calendar year and the income tax on which has been

withheld correctly by the employer (tax withheld equals tax due) shall no longer file an income tax return (1700) required under Sec. 51 of the Code. The following individuals, however, are still required to file their income tax returns:

(A) Individuals deriving compensation concurrently from two or more employers at anytime during the taxable year.

(B) Individuals whose purely compensation income for the taxable year exceeds P60,000.

(C) Individuals receiving a combination of compensation and business income (mixed income). This includes a married individual receiving purely compensation income whose spouse derives income from business.

In case of married individuals who are still required to file returns, only one return for the taxable year shall be filed by either spouse to cover the income of both spouses.

(D) Employees whose total compensation income, regardless of the amount, whether from a single or several employers during the calendar year, the income tax of which has not been withheld correctly, that is, that the total withholding tax does not equal the total tax due on total compensation income for the taxable year.

(E) In case of married individuals where one of the spouses received compensation income exceeding P60,000, a return shall be filed to include the income of the other spouse whose compensation is P60,000 or less.

SECTION 2.83.5. Registration as Withholding Agent.

Every person who makes payment or expects to make payment of compensation in the amount of sixty thousand pesos (P60,000.00) or more a year or five thousand pesos (P5,000.00) monthly, to any single employee shall register by filing in duplicate, with the Revenue District Office (RDO) of the City or Municipality where his legal residence or place of business is located, an Application for Registration as a withholding agent using the form prescribed by the Bureau not later than ten (10) days after becoming an employer.

SECTION 2.83.6. Applicability of Constructive Receipt of Compensation.

The withholding tax on compensation shall apply to compensation actually or constructively paid. Compensation is constructively paid within the meaning of these Regulations when it is credited to the account of or set apart for an employee so that it may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the compensation must be credited or set apart for the employee without any substantial limitation or restriction as to time or manner of payment or condition upon which payment is to be made, and must be made available to him so that it may be drawn upon at any time, and its payment brought with his control and disposition. A book entry, if made, should indicate an absolute transfer from one account to another. If the income is not credited, but it is set apart, such income must be unqualifiedly subject to the demand of the

taxpayer. Where a corporation contingently credits its employees with a bonus stock, which is not available to such employees until some future date, the mere crediting on the books of the corporation does not constitute payment.

SECTION 2.83.7. Extension of Time for Furnishing Statements to Employee.

An extension of time, not exceeding thirty (30) days, within which to furnish the Certificate of Income Tax Withheld on Compensation (Form No. 2316) required by Sec. 2.83 of these Regulations upon termination of employment is hereby granted to any employer with respect to any employee whose employment is terminated during the calendar year. In the case of intermittent or interrupted employment where there is a reasonable expectation on the part of both employer and employee or further employment, there is no requirement that an employee's withholding statement be immediately furnished the employee; but when such expectation cease to exist, the statement must be furnished within thirty (30) days from the date of termination of employment. The extension mentioned under this Section refers to extension of time for furnishing the Certificate of Income Tax Withheld on Compensation (Form No. 2316) upon termination of employment.

SECTION 4.114. Withholding of Creditable Value-Added Tax

In general, value-added tax due on sales of goods and services are not subject to withholding since the tax is not determinable at the time of sale. However, sale of goods and services to the government subject to VAT shall be subject to withholding pursuant to Sec. 114 (C) of RA 8424.

(A) Rates and basis of creditable value-added tax to be withheld.

The gross payments made by the government to sellers of goods and services shall be subject to withholding tax at the rates herein prescribed:

- (1) In general, payments by the government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) on account of its purchase of goods from sellers and services rendered by contractors who are subject to the value-added tax
On gross payment for the purchase of goods - 3%
On gross payment for services rendered - 6%
- (2) Payments made to government public works contractors 8.5%
- (3) Payments for lease or use of property or property rights to non-resident owners 10%

(B) Persons required to deduct and withhold.

All local government units, represented by the Provincial Treasurer in provinces, the City Treasurer in cities, the Municipal Treasurer in municipalities, and Barangay Treasurer in barangays, Treasurers

of GOCCs and the Chief Accountant or any person holding similar position and performing similar function in national government offices, as withholding agents, shall deduct and withhold the prescribed creditable value-added tax before making any payment to seller of goods and services.

Where the government as herein defined has regional offices, branches or units, the withholding and remittance of the creditable VAT may be done on a decentralized basis as such, the treasurer or the chief accountant or any person holding similar function in said regional office, branch or unit shall deduct and withhold the creditable VAT before making any payment to the seller of goods and services.

(C) Returns and payment of taxes withheld.

The withholding agents shall accomplish the Monthly Value-Added Tax Declaration (BIR Form 2550M) in duplicate and the amount withheld paid upon filing the return with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the place where the government office is located. In places where there are no authorized agent bank, the return shall be filed directly with the Revenue District Offices, Collection Offices or the duly authorized Treasurer of the city or municipality where the government office is located except in cases where the Commissioner otherwise permits.

The required return shall be filed and payments made within ten (10) days following the end of the month the withholding was made except taxes withheld for the 3rd month of the quarter which shall be remitted through a Quarterly Value-Added Tax Return (BIR Form 2550Q) to be filed not later than the 25th day after the end of the calendar quarter. A

(D) Certificate of Value Added Tax Withheld.

Every withholding agent shall furnish each seller of goods and services from whom taxes has been deducted and withheld, the Certificate of Creditable Tax Withheld at Source (BIR Form 2307) to be accomplished in quadruplicate, the first three copies of which shall be given to the seller/payee not later than the fifteenth day of the following month. The fourth copy shall be the file copy of the withholding agent.

(E) Liability of designated officers.

- (1) Additions to the tax.** The designated Treasurers, Chief Accountants and other persons holding similar positions, who have the duty to withhold and remit the value added tax in their respective offices shall be personally liable for the additions to the tax prescribed in Sec. 247 of the Code.
- (2) Punishable acts or omissions.** Every officer or employee of the government of the Republic to the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government owned or controlled corporations charged with the duty to deduct and withhold any internal revenue tax and to remit the same in accordance with these regulations shall, upon

conviction for each act or omission herein-below specified, be fined in a sum of not less than five thousand pesos (P5,000.00) but not more than fifty thousand pesos (P50,000.00) or imprisoned for a term of not less than six months and one day but not more than two years, or both.

- (a) Fails or causes the failure to deduct and withhold any internal revenue tax covered by these regulations;
- (b) Fails or causes the failure to remit the taxes deducted and withheld within the time prescribed therein;
- (c) Fails or causes the failure to file the return or issue certificate required.

SECTION 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 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 Sec. 109 (z) of the Code from payment of value-added tax and who is not a VAT registered person except payment to cooperatives Three percent (3%)
- (2) Domestic carriers and keepers of garages. On gross payments to operators of cars for rent or hire driven by the lessee, transportation contractors, including those who transports passengers for hire, and other domestic carriers by land, air or water, for transport of passengers, except owner of bancas and owners of animal-drawn two wheeled vehicle, and keepers of garages Three percent (3%)
- (3) International carriers
 - (a) On gross payments to international air carriers doing business in the Philippines Three percent (3%)
 - (b) On gross payments to international shipping carriers doing business in the Philippines Three percent (3%)
- (4) Franchises
 - (a) On gross payments to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year does not exceed P10,000.00 Three percent (3%)
 - (b) On gross payments to franchises on electric, gas and water utilities Two percent (2%)

(5) Banks and non-bank financial intermediaries

- (a) On interest, commissions and discounts paid or given to banks and non-bank financial intermediaries arising out of lending activities as well as financial leasing, on the basis of the remaining maturities of the instrument
 - Short-term maturity (not exceeding 2 years) 5%
 - Medium-term maturity (over 2 year but not exceeding 4 years) 3%
 - Long-term maturity
 - (i) over 4 years but not exceeding 7 years 1%
 - (ii) over 7 years 0%
- (b) On dividends 0%
- (c) On royalties, rentals of property, real or personal, profits from exchange and all other gross income Five percent (5%)

(6) Finance companies

- (a) On interest, discounts and other items of gross income paid to finance companies and other financial intermediaries not performing quasi-banking functions Five percent (5%)
- (b) On interests, commissions and discounts paid from their loan transactions from finance companies as well as financial leasing based on the remaining maturities of the instruments:
 - Short-term maturity (not exceeding 2 years) 5%
 - Medium-term maturity (over 2 years but not exceeding 4 years) 3%
 - Long-term maturity
 - (i) over 4 years but not exceeding 7 years 1%
 - (ii) over 7 years 0%

(7) Life insurance premiums On the total premiums paid to persons doing life insurance business of any sort in the Philippines Five percent (5%)

However the following shall not be included in the taxable receipts and consequently not subject to withholding tax:

- (a) Premiums refunded within six (6) months after payment on account of rejection of risk or returned for other reasons to the insured;
- (b) reinsurance premiums where the tax has previously been paid;
- (c) premiums collected or received by any branch of a domestic corporation, firm or association doing business outside the Philippines on account of any life insurance of a non-resident insured, if any tax on such premium is imposed by a foreign country where the branch is established;

- (d) premiums collected or received on account of any reinsurance, if the insured, in case of personal insurance resides outside the Philippines, if any tax on such premiums is imposed by a foreign country where the original insurance has been issued or perfected;
 - (e) portion of the premiums collected or received by the insurance companies on variable contracts in excess of the amounts necessary to insure the lives of the variable contract workers.
- (8) Agents of foreign insurance companies**
- (a) On premiums paid to every fire, marine, or miscellaneous insurance agent legally authorized under the Insurance Code to procure policies of insurance on risk located in the Philippines for companies not authorized to transact business in the Philippines except on reinsurance premium Ten percent (10%)
 - (b) On premium payments obtained directly with foreign companies where the owner of the property does not make use of the services of any agent, company or corporation residing or doing business in the Philippines, in which case, it shall be the duty of said owners to report to the Insurance Commissioner and to the BIR Commissioner each case where insurance has been so effected Five percent (5%)
- (9) Amusements** On gross payments to the proprietor, lessee, or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, jai-alai and racetracks at the rates herein prescribed:
- (a) cockpits Eighteen percent (18%)
 - (b) Cabarets, night and day clubs Eighteen percent (18%)
 - (c) Boxing exhibitions except those wherein World or Oriental Championship in any division is at stake and at least one of the contenders is a citizen of the Philippines and promoted by a citizen/s of the Philippines or by a corporation or association at least 60% of the capital of which is owned by such citizens Ten percent (10%)
 - (d) Professional basketball games as envisioned in Presidential Decree No. 871 Fifteen percent (15%)
 - (e) Jai-alai and racetracks irrespective of whether or not any amount is charged for admission Thirty percent (30%)
- (10) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange.** On the gross selling price or gross value in money derived on every sale, barter or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities One-half of one percent (1/2 of 1%)
- (11) Shares of stock sold or exchanged through initial public offering.** On the gross selling price or gross value in money derived on every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations in accordance with the proportion of such shares to the total outstanding shares of stock after the listing in the local

stock exchange at the rates herein prescribed:

Not over 25% 4%

Over 25% but not exceeding 33 1/3% 2%

Over 33 1/3% 1%

(B) Returns and payments of taxes withheld.

No money payments shall be made by any government office or agency unless the taxes due thereon shall have been deducted and withheld.

Taxes deducted and withheld shall be covered by the Monthly Return of Internal Revenue Taxes withheld on Government Money Payments (BIR Form 1600) in duplicate to be filed and the tax to be paid to the Authorized Agent Bank located within the Revenue District Office (RDO) having jurisdiction over the place where the government office is located. In places where there are no authorized agent bank, the return shall be filed directly with the Revenue District Officer, Collection Officer or the duly authorized Treasurer of the City or Municipality where the government office is located except in cases where the Commissioner otherwise permits. The required return shall be filed and payments made within ten (10) days following the end of the month the withholding was made.

(C) Certificate of internal revenue taxes withheld.

Every withholding government office, agency or entity shall furnish each proprietor, operator, common carrier, franchise holder, bank and non-bank financial intermediaries, finance company, insurance company or agent from whom taxes under these regulations had been deducted and withheld the Certificate of Creditable Tax Withheld at Source (BIR Form 2307) to be accomplished in triplicate, two copies to be given to the payee simultaneously with the money payments not later than the fifteenth (15th) day of the month following the close of the calendar quarter. The third copy of the certificate shall be the file copy of the withholding government office, agency or entity.

(D) Liability of designated officers

- (1) Additions to the tax** The designated Treasurers, Chief Accountants and other persons holding similar positions, who have the duty to withhold and remit the value added tax in their respective offices shall be personally liable for the additions to the tax prescribed in Sec. 247 of the Code.
- (2) Punishable acts or omissions** 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 charged with the duty to deduct and withhold any internal revenue tax and to remit the same in accordance with these regulations shall, upon conviction for each act or omission herein-below specified, be fined in a sum of not less than five thousand pesos (5,000.00) but not more than fifty thousand pesos (50,000.00) or

imprisoned for a term of not less than six months and one day but not more than two years, or both.

- (a) Fails or causes the failure to deduct and withhold any internal revenue tax covered by these regulations;
- (b) Fails or causes the failure to remit the taxes deducted and withheld within the time prescribed therein;
- (c) Fails or causes the failure to file the return or issue certificate required.

REPEALING CLAUSE.

All existing rules and regulations or parts thereof which are inconsistent with the provisions of these regulations are hereby revoked.

EFFECTIVITY.

These regulations shall take effect on compensation income paid beginning January 1, 1998. No penalties shall apply until May 15, 1998 for non-compliance with the new features of the Code as implemented in these regulations.