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Bureau of Internal Revenue

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**BUREAU OF INTERNAL
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NO. 1-2008**

Amends certain provisions of Revenue Regulations (RR) No. 10-2006 by prescribing the procedures to govern the registration of Master Securities Lending Agreement (MSLA) and providing the guidelines for the execution and registration of multilateral MSLAs during the transition period of the Securities Borrowing and Lending (SBL) Program.

For purposes of these Regulations, SBL shall be limited to borrowing and lending of shares of stock or securities listed in the Philippine Stock Exchange (PSE) unless declared by the Securities and Exchange Commission (SEC) to be ineligible for borrowing and lending under an SBL Program. SBL Program for other securities listed and traded in other Exchanges shall be covered by a separate Regulation.

SBL involves the lending of shares of stocks or securities by the Lender, who owns or controls them, to the Borrower who needs the shares of stocks/securities borrowed to support trading strategies or settlement obligations, in exchange for a collateral and the promise to return the equivalent shares of stocks/securities at the end of the borrowing period. The borrowing period in any agreement cannot be more than two (2) years.

For purposes of these Regulations, the SBL transactions of shares of stock/securities listed in the PSE, as well as the delivery to and return by the Lender/Lending Agent of collateral appurtenant thereto or the Equivalent Shares of Stock/Securities, shall not be subject to the stock transaction tax under Section 127 or Capital Gains Tax imposed under Section 24(C), 25(A)(3), 28(A)(7)(c) and 28(B)(5)(c) of the Tax Code, and Documentary Stamp Taxes under Section 176 and 199(c) of the National Internal Revenue Code (NIRC), as amended by Republic Act 9243; provided, that a

valid MSLA is executed by the parties and registered with and approved by the BIR, the SBL Program is in accordance with the rules and regulations of the SEC, and such SBL Program is under the administration and supervision of the PSE. However, all other applicable taxes prescribed by the Tax Code and special laws shall continue to apply.

Unless the terms and conditions of these Regulations are complied with, the borrowing (lending) of shares of stock/securities shall be treated as a disposal (an acquisition) by the Lender (Borrower), and the return of borrowed shares/securities shall be treated as an acquisition (disposal) by the Lender (Borrower), in which case, the applicable taxes on the transaction shall be imposed.

Prior to the borrowing of shares of stock/securities by the Borrower and negotiating the terms of an SBL, the parties must have entered into an MSLA or Multilateral MSLA. A valid MSLA or Multilateral MSLA contains the following features:

- a. Entitlement of Lender to certain stock rights/ interest - While there is transfer of the shares of stock/securities to the Borrower, the Lender retains certain rights accruing to the shares of stock/securities lent, such as the right to receive cash, stock dividends or interest which the Borrower is obliged to manufacture or reimburse to the Lender during the borrowing period. These cash, stock dividends or interest which the Borrower is required to manufacture or reimburse to the Lender are otherwise referred to as "Manufactured Dividends or Benefits". The Lender may likewise retain voting rights over the loaned shares of stock/securities while in the possession of the Borrower, if mutually agreed upon by the parties. Receipt of the Manufactured Dividends or Benefits shall not be a taxable income of the Lender since it just represents dividends/other benefits that the lender would have received had the

- share not been loaned pursuant to SBL. However, the payment of such amount by the Borrower shall not be a tax deductible expense. On the other hand, the receipt of cash dividend from the issuing company by the Borrower or Buyer shall be subject to the provisions of existing laws.
- b. Stock recall/return - The Lender is entitled to recall the loaned shares of stock/securities in whole or in part. Upon demand or at the end of the Borrowing Period, the Borrower has the corresponding obligation to return the Equivalent Shares of Stock/Securities, i.e. equivalent number of the same class or type of shares of stock/securities, carrying the same rights, and issued by the same company as that of the borrowed shares of stock/securities. The Borrower may return the borrowed shares/ securities or the Equivalent Shares of Stock/Securities pursuant to Section 18 of SEC Memorandum Circular No. 7 (2006).
 - c. Collateral requirement - There is no consideration involved in the same manner as a regular buy and sell transaction. Instead, the Borrower merely puts up a collateral in accordance with the rules prescribed by the SEC and/or PSE in order to guarantee his obligations under the MSLA, which collateral may not be necessarily in the form of cash but may also be in the form of government or equity securities or letters of credit.
 - d. Borrowing period - The period agreed upon by the parties during which the specific SBL transaction under the MSLA is made effective and upon the termination of which, the specific SBL transaction is likewise ended. However, this period shall in no case exceed two (2) years from the date of execution of SBL Confirmation Notice.
 - e. Stock and collateral return - Upon the expiration of the Borrowing period, the Borrower is bound to return the Equivalent Shares/ Securities. Concomitantly, the Lender is required to return the collateral put up by the Borrower.
 - f. Specified purpose(s) - The purpose or purposes for which the borrowed shares of stock/securities will be used are specified in and accordingly limited by the MSLA, which must be any of the following:
 - i. Settlement of sale of Philippine shares of stock/securities effected in the Philippines - Shares of stock/securities may be borrowed to avoid failure to deliver for the settlement of a sale. This happens when the seller cannot deliver what he owns on time (failed settlement) and therefore would need to borrow in order to fulfill his settlement obligations. The corresponding transaction taxes relative to the sale of shares/securities shall apply to the actual sale of shares/securities.
 - ii. Settlement of a future sale whether agreed or not at the time the borrowing is effected - Shares of stock/securities may be borrowed in advance of a sale if it is anticipated that the borrowed shares of stock/securities will be required for settlement of the said future sale. The corresponding transaction taxes relative to the sale of shares of stock shall apply to the actual sale of shares/securities.
 - iii. Replacement in whole or in part of shares of stock/securities obtained by the Borrower under another SBL agreement - Where a Lender demands the early return of borrowed shares of stock/securities, a Borrower without a sufficient quantity on hand of the shares of stock/securities demanded to be returned can borrow Equivalent Shares of Stock/Securities from a third party to repay the first Lender. The replacement

- borrowing may be for the whole, or part only, of the previously borrowed shares of stock/securities. A condition applying to such an arrangement is that the initial borrowing must itself be an SBL within the meaning of these Regulations. Moreover, the second borrowing must also be under an SBL governed by these Regulations.
- iv. On-lending of borrowed shares of stock/securities to another Borrower who has effected another SBL agreement - This occurs when an SBL is made by an Agent for on-lending to another Borrower who also effects an SBL. However, the subsequent Borrower must use the Borrowed shares of stock/ securities for any of the purposes specified herein. Because of the practical difficulties an intermediary could face in determining how the subsequent Borrower had used the shares of stock/securities, the BIR shall look at an intermediary's borrowings and on-lendings separately. Thus, provided an intermediary borrows for the purpose of on-lending, his borrowing transaction will qualify under a conditional tax-free status. Furthermore, as shares of stock/securities carrying the same rights are fungible, it is not necessary to match each of an intermediary's SBL with each of his on-lendings on a case-by-case basis.
 - v. Securities financing and collateral pledging - Shares of stocks/ securities may be used by the Borrower as collateral for obtaining loans. The borrowed shares of stock may, in turn, be used by the Borrower as a commodity to lend to participants in securities market so that the participants can carry out their investments and financing efforts.
 - vi. Other authorized purposes - Other purposes similar or analogous to the foregoing, or consistent with the objectives of the SBL program as may be determined by the BIR upon favorable recommendation of the SEC and the PSE.
- The following guidelines govern the execution of the MSLA:
- a. The Borrower must obtain the shares of stock/securities for one or more of the specified purposes as defined in the Regulations. In this regard, the MSLA may refer to the specified purposes within the meaning of these Regulations. However, an MSLA which permits shares of stock/securities to be borrowed for the specified purposes as defined and some other purposes not defined or authorized by these Regulations shall not qualify as a valid MSLA.
 - b. A single MSLA may provide for the borrowing and lending of more than one type of shares of stock/securities. However, only shares of stock/securities, the sale and purchase of which are subject to the rules of PSE and SEC, are eligible for SBL transaction. Shares of stock/securities in private companies not listed and traded through the PSE do not fall within the scope of an SBL transaction subject of these Regulations.
 - c. Every MSLA entered into by a Borrower and a Lender/Lending Agent or by their duly authorized agents must be registered with the BIR upon payment of the prescribed registration fee. Only the Borrower or the Lending Agent is required to register the MSLA to avoid duplication.
 - d. As a general rule, an MSLA should be entered into by the Borrower for every Lender/Lending Agent. However, in view of the administrative difficulty of executing and registering an MSLA for every borrower, a Multilateral MSLA may be executed and submitted to the BIR by the Lender/Lending Agent or the concerned party with multiple borrowers. This means that instead of executing separate MSLAs for each borrower, the Lender/Lending Agent or the concerned party may execute and register with

the BIR a Multilateral MSLA reflecting their undertaking and willingness to be bound by its provisions. It is understood that a Multilateral MSLA shall contain all the features of a valid MSLA, including the delivery of collateral.

- e. Where an MSLA does not comply with the requirements, the BIR shall consider the requirements fulfilled if a copy of the MSLA is accompanied by an executed copy of an addendum duly complying with the deficiency requirement. In such cases, the addendum should be attached to a copy of the MSLA. Only transactions entered into subsequent to the extension of the addendum will be eligible for a conditional tax-free status.

The guidelines on the registration of every MSLA or Multilateral MSLA are specified in the Regulations. Only SBL transactions under an MSLA or Multilateral MSLA duly registered and approved by the BIR shall be entitled to the conditional tax-free status of the said transactions. Failure to register the MSLA or Multilateral MSLA will make the SBL transaction a sale and purchase of the borrowed shares of stock/securities outside the PSE. Thus, the SBL transaction shall be subject to the corresponding Capital Gains Tax and Documentary Stamp Tax. In order not to be assessed the corresponding taxes on the transaction, a Lender/Lending Agent should advise the BIR in writing that it has entered into an MSLA by filling-in the Notification of Execution of MSLA Form. The advice should include particulars of the agreement similar to those shown in the MSLA Registration Form. Said notification shall be submitted upon the registration of the MSLA by the Borrower.

An SBL is deemed a sale and purchase of the borrowed shares of stock/securities (or part of it, as the case may be) when any of the following circumstances is present:

- a. There is no Stock Return in whole or in part of the borrowed shares of stock/securities at the end of the borrowing period. A partial

stock return is permissible. However, the balance of any borrowed shares of stock/securities that has not been returned at the end of the borrowing period is deemed to have been bought (sold) by the Borrower (Lender);

- b. The borrowed shares of stock/securities, or part of it, have been used other than that for the specified purposes mentioned above;
- c. The borrower is in default in accordance with the terms provided for in the MSLA for the return of the whole or part of the borrowed shares of stock/securities; provided, that the Lender/Lending Agent may purchase Equivalent Shares of Stock/Securities using the collateral of the borrower from the stock exchange, which purchase is subject to the Stock Transaction Tax of the NIRC of 1997, as amended;
- d. There is failure to comply with the essential features of a valid MSLA;
- e. There is failure to register or there is delayed registration of the MSLA; or
- f. SBL transactions were entered into by the parties outside the borrowing period.

The Borrower is required to comply with the following requirements for record keeping and reporting:

- a. Keep SBL ledgers and other books of account in the form prescribed by the Commissioner of Internal Revenue;
- b. Enter required particulars of SBL transactions and Stock Return into that ledger
- c. Prepare and keep an SBL Transaction Report for each specific SBL transaction in accordance with the form attached in the Regulations or substantially equivalent form; and
- d. Provide BIR copies of the SBL Transaction Report and the accompanying SBL Confirmation Notice.

Provided, that where a Lending Agent is engaged by the parties for the SBL transactions, the Len-

ding Agent shall be the one to provide the BIR with summary reports of outstanding and liquidated SBL transactions as required in Section 12(c) of RR No. 10-2006.

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REVENUE REGULATIONS NO. 2-2008

Amends certain rules and regulations relative to the collection and remittance of taxes paid to Authorized Agent Banks (AABs) thru Over-the-Counter (OTC) and Electronic Filing and Payment System (EFPS) and further amends the Memorandum of Agreement (MOA) relative to the accreditation of the AABs.

These Regulations cover OTC and EFPS payments in order to rationalize the granting of incentives to AABs and the imposition of penalties to effectively utilize and maximize the banking system in receiving internal revenue tax payments.

All banks presently authorized to collect internal revenue taxes may continue to do so until such time that a new MOA is executed among the Bureau of Internal Revenue (BIR), Bureau of Treasury (BTr) and the banks which have qualified for accreditation.

Considering that the incentive given to AABs is in the form of "float period" (the period beginning on the day after the date of collection until the prescribed remittance day), the following guidelines shall be strictly followed:

- a. The determination of float period shall be done semi-annually based on the number of OTC transactions processed/accepted by the AABs on the same semester of the preceding year, and compliance with the obligations and conditions stated in the MOA. The notice shall be sent semi-annually (i.e. for the first semester, notice will be sent on or before December of the previous year; likewise, for the second semester, notice will be sent on or before June of the current year). The EFPS float period shall be dependent on the OTC float period. The higher the number of OTC transactions processed/ac-

cepted, the longer the float period of an AAB. The OTC float period shall be six (6), eight (8) or ten (10) days, while for EFPS the float period shall range from three (3) to five (5) days. However, for those with no OTC transaction or falling below the threshold for a particular semester under evaluation, the float period shall be one (1) day less than the minimum float period prescribed. The guidelines and procedures in the determination of float period for a particular semester applicable to AABs shall be covered by a separate issuance.

- b. For EFPS transactions, all internal revenue collections shall be credited to the account of the BTr on the date of collection and remitted on the date prescribed in a written communication by the Assistant Commissioner, Collection Service (ACIR-CS) to the concerned AAB and BTr. The float period for EFPS shall be half of the float period for OTC transactions as notified by the BIR.
- c. For OTC transactions [include payments thru Debit System, Electronic Service Machine (ESM) and G-Cash], all internal revenue collections shall be credited to the account of the BTr on the date of collection and remitted on the date prescribed in a written communication by the ACIR-CS to the concerned AAB and BTr.
- d. For AABs accredited for the first time, the applicable float period shall be the minimum as notified by the BIR.

The penalties imposed on AABs for non-compliance with the provisions of MOA, as provided for in Revenue Regulations (RR) No. 15-94, as amended by RR No. 19-2001, is revised as prescribed in Annex A-2 of the MOA attached in the Regulations. All penalties imposed, after the effectivity of these Regulations, on procedural errors, as well as violations on remittance procedures and other violations relative to the MOA, Bank Bulletins and applicable revenue issuances, shall not be subject to compromise.

Prior to the execution of the new MOA, all existing AABs shall:

- a. Comply with the responsibilities indicated in the existing MOA;
- b. File a Letter of Intent indicating the list of branches for accreditation and submit necessary documents relative thereto within 30 days from effectivity of these Regulations; and
- c. Settle outstanding penalties not later than 30 days from receipt of written notice based on the following:
 - i. Procedural Errors/Delay in Submission of Reportorial Requirements For Calendar Year 2007 and prior years - 60% of total Penalties imposed For Calendar Year 2008 - Full payment
 - ii. Penalties for Late Remittance of Tax Collections full payment of penalties imposed shall be paid, except for those who have pending application for compromise settlement filed and received not later than December 31, 2007 for which the Bank Accreditation Committee (BAC) has resolved/decided; provided further, that payment must be made within the prescribed period stated in the BAC decision.
- d. The float period that AAB shall follow for EFPS and OTC transactions from the time of execution of the new MOA until June 30, 2008 shall be based on the notice to be given during the signing of the new MOA.

The authority of an AAB to collect internal revenue taxes shall be revoked upon failure to file Letter of Intent to renew accreditation, submit documentary requirements, and settle outstanding penalties as notified by the BIR within the specified period. Likewise, after proper evaluation of BAC, revocation of authority to collect internal revenue taxes shall also be resorted to, in cases of AABs' violation of the provisions of the MOA and non-payment of penalties imposed.

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REVENUE REGULATIONS NO. 3-2008

Amends certain provisions of existing Revenue Regulations on the granting of outright Excise Tax exemption on removal of excisable articles intended for export or sale/delivery to international carriers or to tax-exempt entities/agencies and prescribes the provisions for availing claims for product replenishment as a remedy on the imposition of Excise Tax on such removals.

Subject to the subsequent filing of a claim for Excise Tax credit/refund or product replenishment, all manufacturers of articles subject to Excise Tax shall pay the Excise Tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies: Provided, that in case the said articles are likewise being sold in the domestic market, the applicable Excise Tax rate shall be the same as the Excise Tax rate imposed on the domestically sold articles.

In the absence of a similar article that is being sold in the domestic market, the applicable Excise Tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable.

For this purpose, all permits issued by the BIR to maintain BIR-bonded storage facilities are revoked or withdrawn upon the effectivity of these Regulations. Accordingly, the Excise Tax due on all excisable articles stored in the bonded storage facilities shall be paid by the manufacturer pursuant to the transitory provisions of these Regulations.

Provided, however, that the tax treatment on the direct exportation and/or domestic sale/delivery to international carriers and to other tax-exempt entities/agencies by any person who is authorized to maintain and operate customs' bonded facilities, or by any person or entity registered within the economic or Freeport zones shall be covered by a separate Revenue Regulations, in coordination with

the appropriate regulatory government agencies. The payment of Excise Tax prescribed in the Regulations for articles exclusively intended for export or for sale/delivery to tax-exempt entities/agencies or international carriers, but later found in the domestic market, shall not give rise to the automatic amendment of the previous permit to export issued for such purpose. The same shall be subject to the applicable penalties attendant thereto.

The printing requirements under existing rules and regulations on labels and packages on the articles exported or sold/delivered to tax-exempt/agency or international carrier shall be complied with strictly. Otherwise, the same shall not be entitled to any tax credit/refund or product replenishment.

In case of sale/delivery to embassies, legates such as the Office of the Papal Nuncio or international organizations (i.e. Asian Development Bank, International Rice Research Institute, United Nations' various international organizations such as World Health Organization, UNICEF, etc.), the excisable articles may be removed from the place of production of the manufacturer without payment of the Excise Tax, subject to the following conditions:

- a. For each and every transaction, a prior written permit shall be secured by such tax-exempt entities from the Large Taxpayer Assistance Division II (LTAD II); and
- b. No subsequent permit shall be approved and issued unless a liquidation report on the previously purchased tax-exempt articles has been submitted by the said tax-exempt entities to LTAD II within 30 days from the date of removal of the tax-exempt article from the place of production. However, any subsequent application for permit filed by the same tax-exempt entity before the lapse of the said prescribed liquidation period may be processed by the said office pending submission of the liquidation report on the previously issued permit, but approval shall be made only after completion of the liquidation of the previous purchases. For this purpose, the liquidation report shall be accompanied by copies of the

following documents:

- i. Commercial invoice issued by the manufacturer;
- ii. Delivery receipt issued by the manufacturer;
- iii. Official Receipt issued by the manufacturer;
- iv. Certificate of Registration with the Land Transportation Office (LTO), in case of automobiles; and
- v. Withdrawal Certificate (WC), Official Delivery Invoice (ODI) or any BIR-prescribed forms to document removal of excisable articles from the place of production.

In case the excisable products were removed by the manufacturer from his place of production or from any storage facility located outside his place of production after prepayment of the Excise Tax for purposes of exportation or sale/delivery to tax-exempt entities/agencies or international carriers pursuant to these Regulations, the said manufacturer may, at its option, avail a claim for product replenishment instead of filing a claim for tax credit/refund of the Excise Tax that has been previously paid on the articles removed for such purposes, subject to the following requirements:

- a. Conditions for product replenishment- The option of product replenishment may be availed of by the manufacturer only under the following conditions:
 - i. Excisable articles, regardless of the volume and value, which are likewise intended for exportation or sale/delivery to international carriers or tax-exempt entities/agencies may be allowed to be removed from the place of production without the payment of the Excise Tax in order to replenish the Excise Tax-paid article that was previously exported or sold/delivered to international carriers or tax-exempt entities/agencies: Provided, that the total Excise Tax that has been previously paid is sufficient to cover the Excise Tax due on the subsequent exportation or sale/delivery to international car-

- riers or tax-exempt entities/agencies;
- ii. In case the Excise Tax that has been actually paid in the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers is LESS than the Excise Tax that is otherwise due on the articles applied for product replenishment, the difference shall be paid by the manufacturer before removal from the place of production. On the other hand, in case the same is MORE than the Excise Tax that is otherwise due on articles applied for product replenishment, the difference may be utilized for any future application for product replenishment. In lieu thereof, and at the option of the manufacturer, he may also file a claim for tax credit/refund with the appropriate office in the BIR, subject to the prescriptive period requirements of the Tax Code.
 - iii. In case the rate of Excise Tax imposed at the time of application for replenishment shall be different from that imposed and paid at the time of the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers, or in case the articles applied for replenishment are no longer subject to Excise Tax, the following rules shall be observed:
 - If the equivalent Excise Tax that was paid is MORE than the equivalent Excise Tax that is otherwise due on the articles applied for replenishment, the volume of articles representing the difference may be the subject of any future application for product replenishment, or the manufacturer, may, at his option, file a claim for tax credit/refund with the appropriate office in the BIR for the excess Excise Tax paid which represents such difference, subject to the prescriptive period requirements of the Tax Code.
 - If the equivalent Excise Tax that was previously paid is LESS than the equivalent Excise Tax that is otherwise due on the articles applied for replenishment, the volume of articles applied for replenishment representing the difference shall be disallowed from the said application and the corresponding Excise Tax due shall be paid by the manufacturer before removal from the place of production.
 - iv. The Excise Tax on articles intended for export or sale/delivery to tax-exempt entity/agency or international carrier upon which a claim for replenishment shall be subsequently filed with the BIR should be actually paid before removal from the place of production using Payment Form No. 0605 on a “per shipment basis” in order to facilitate the processing of such claim. Accordingly, claims for replenishment of articles upon which the Excise Tax was paid under the advance deposit schemes shall not be accepted.
 - v. For purposes of continuity on the availment of the product replenishment on subsequent exportations or sales/deliveries to international carriers or tax-exempt entities/agencies of excisable articles, the concerned excise taxpayer shall, for each and every shipment of the articles, file an application for product replenishment, together with the copy of Payment Form No. 0605 as proof of additional Excise Tax payment. The documentary proofs of the actual shipment prescribed under these Regulations for application for product replenishment shall be submitted within 90 days from the date of actual shipment: Provided, however, that, in case of failure to submit the said documents within the said prescribed period, the corresponding Excise Taxes shall be assessed and collected from the concerned excise taxpayer, inclusive of increments.

The BIR shall approve the application for product replenishment in the total amount of Excise Tax, including any additional Excise Tax that has been previously paid by the concerned excise taxpayer.

b. Application for product replenishment - The manufacturer shall file a written application for Product Replenishment Certificate with the Chief, Large Taxpayers Field Operations Division (LTFOD), Large Taxpayers Service in the National Office of the BIR, together with the following copies of documents:

i. For direct export transactions

- “Export Permit” of product applied for replenishment
- Proof of payment of the Excise Tax due on the product
- Purchase order
- Commercial invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
- Packing list
- Bill of Lading
- Withdrawal Certificate, Official Delivery Invoice or any BIR - prescribed forms to document removal of excisable articles from the place of production
- Inward remittance of the export proceeds in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). In case the said remittance covers several exportations, the same shall be accompanied by a summary of the details indicating the commercial invoice numbers, bills of lading numbers and the amounts of sales
- “Certificate of Loading” issued by the Bureau of Customs (BOC)
- Certified true copy of the container scanner’s report and film negative issued by the BOC
- Batch liquidation statements indicating receipts and removals
- Other documents as may be required, if warranted

ii. Sale/delivery to international carriers

- Proof of reciprocity agreement duly attested by the Department of Foreign Af-

fairs (DFA)

- Bilateral air agreement with the foreign country of destination, in case of international airlines
 - “Certificate of Registration” issued by the Maritime Authority of the Philippines (MARINA) certifying that the marine vessel is exclusively engaged in international shipping
 - Sales invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
 - Purchase order or supply agreement
 - Proof of payment of the Excise Tax
 - Withdrawal Certificate, Official Delivery Invoice or any BIR - prescribed forms to document removal of excisable articles from the place of production
 - Batch liquidation statements indicating receipts and removals
 - Proof that the Excise Tax was not billed to the customer
 - Other documents as may be required, if warranted
- iii. Sale/delivery to entities registered in freeport/economic zones/ other tax-exempt entities/agencies (PEZA, SBMA, etc.)
- “Certificate of Registration” duly issued by the regulatory authority of the freeport/economic zone
 - “Certificate of Good Standing” duly issued by the appropriate government regulatory agency for the covered period
 - Sales invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
 - Purchase order or supply agreement
 - Proof of payment of the Excise Tax
 - Withdrawal Certificate, Official Delivery Invoice or any BIR - prescribed forms to document removals of excisable articles from the place of production
 - Batch liquidation statements indicating receipts and removals
 - Proof that the Excise Tax was not billed to the customer
 - Certified true copy of the gate pass documenting the entry of the article in the secured area of the freeport/economic zone

- Certification duly issued by the appropriate government regulatory agency that the article did not subsequently enter the customs territory
 - Other documents as may be required, if warranted
- c. Time of filing a claim for product replenishment.- The said application for product replenishment shall be filed within 90 days from the actual date of exportation or sale/delivery to the tax-exempt entity/agency or international carrier: Provided, that the failure to file the said application within the said prescribed period or the denial of the said application for replenishment shall not preclude the applicant from filing an application for tax credit/refund in accordance with the existing rules, subject to the prescriptive period requirement of the Tax Code.
- d. Period for processing a claim for product replenishment.- The approved Product Replenishment Certificate (PRC) shall be issued by the Chief, LTFOD within 10 days from the actual date of filing of the application with complete supporting documents prescribed by these Regulations.
- e. Utilization of Product Replenishment Certificate. - A duly approved and issued PRC shall be utilized by filing an application for Product Replenishment Debit Memo (PRDM) with the Chief, LTFOD that will serve as the authority of the taxpayer to remove the excisable article from his place of production without the actual payment of the Excise Tax: Provided, however, that any outstanding Excise Tax liability that is due and demandable from the concerned taxpayer shall be paid first before the said certificate shall be allowed to be utilized.
- f. Validity of the Product Replenishment Certificate. - The PRC shall remain valid within five (5) years from the date of issuance as indicated on the face of the said Certificate. In the event that the Certificate has not been utilized within the said prescribed period, a one-time revalidation shall be allowed by filing an application for revalidation with the appropriate BIR office before the expiration of its validity. A duly-approved PRC, based on its outstanding balance, may be converted into

a Tax Credit Certificate (TCC) or Tax Refund at anytime during the validity by filing a written application to the appropriate BIR office: Provided, however, that, in case the PRC is converted into a TCC, the period of validity of the TCC shall be the same with the remaining period of validity of the PRC. The sale, assignment or transfer of any PRC to another person is prohibited.

- g. Requirements on BIR-prescribed forms for withdrawals - For every removal of articles which is covered by a PRC, the phrase "COVERED BY PRDM NO. _____ UNDER PRC NO. _____" as well as the volume and the corresponding amount of Excise Tax covered by the said certificate shall be clearly printed or stamped on the face of accompanying BIR-prescribed forms, such as the Withdrawal Certificates and the Official Delivery Invoices. In case of failure to comply with this requirement, the Excise Tax due on such removal shall be assessed and collected by the BIR from the manufacturer.

For purposes of filing a claim with the BIR for tax credit/refund or product replenishment on Excise Taxes that have been paid on excisable articles that were actually exported or sold/delivered to tax-exempt entities/agencies or international carriers by the manufacturers where the excisable article is composed of locally manufactured excisable article and imported article, the claim for the Excise Tax on the imported article shall not be allowed. The same shall be separately filed, for purposes only of claiming a tax refund/credit, with the appropriate office in the BIR for the conduct of verification and preparation of the recommendation report to the BOC. On the basis of the transmitted recommendation report of the BIR, the BOC shall subsequently process the claim in accordance with its existing or governing rules and policies on the matter. In no case that imported articles shall be subject to product replenishment under any circum-

stances.

Upon the effectivity of these Regulations, all manufacturers shall submit to the Chief, LTFOD directly, or thru the Head of Excise Tax Areas, a notarized list of inventory of under-bond articles held in their respective possession as of the effectivity of these Regulations, together with the proofs of payment of the Excise Tax due not later than five (5) days from the effectivity of these Regulations. All concerned Heads of Excise Tax Areas shall transmit the inventory lists and the proofs of payment of the Excise Tax to the Chief, LTFOD within 24 hours from the actual date of receipt thereof. The BIR shall validate the correctness of the inventory lists and the deficiency Excise Tax, if any, shall be assessed and collected from the concerned taxpayer.

For purposes of facilitating the processing of subsequent claims for product replenishments, tax credit or refund where the above inventory of under-bond articles was removed for direct exportation or sale/delivery to international carriers or to tax-exempt entity/agency, the payment of the Excise Tax due on the said inventory of under-bond articles shall be made using BIR Form No. 0605 with the phrase "NOTE: THIS EXCISE TAX PAYMENT IS SUBJECT TO SUBSEQUENT PRODUCT REPLENISHMENT, TAX CREDIT OR REFUND" clearly printed on the face of the said form.

REVENUE MEMORANDUM ORDER NO. 2-2008

Delegates the authority to issue and sign "*Subpoena Duces Tecum (SDT)*" in order to facilitate the immediate assessment and collection of possible deficiency taxes that can be uncovered in the conduct of investigation on taxpayer's accounting records.

SDT covered under the Order shall be those related to the conduct of investigation pursuant to a Letter of Authority/Tax Verification Notice/Mission Order and shall not cover cases already filed in court.

For control and monitoring purposes, the following revenue officials are hereby authorized to issue SDT, to wit:

1. National Office
 - a. The Assistant Commissioner, Legal Service, or
 - b. The Concerned Head Revenue Executive Assistant (HREA) of Legal Service and Large Taxpayers Service, or
 - c. The Chief of the concerned Large Taxpayers Audit Division/District Office, as may be specifically authorized in writing by the Commissioner.
2. Regional Office
 - a. Director, or in his absence, the Assistant Director, or
 - b. The Chief, Legal Division or the concerned Revenue District Officer, as may be authorized by the Regional Director thru a Regional Delegation Order.

This does not, however, preclude the Commissioner and Deputy Commissioners to exercise their authority under the National Internal Revenue Code to issue SDT in appropriate cases.

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REVENUE MEMORANDUM CIRCULAR NO. 3-2008

Circularizes the transition procedures for all Electronic Filing and Payment System (eFPS) filers in using the enhanced BIR Form No. 1702Q – Quarterly Income Tax Return (ITR) for corporations and partnerships.

The enhanced BIR Form 1702Q is now available in all Revenue District Offices (RDOs) and Large Taxpayers Offices. The said form can also be downloaded through the BIR's official website – www.bir.gov.ph under BIR Forms and Income Tax Return (Individuals, Corporations, Capital Gains) link.

However, the said enhanced BIR Form 1702Q is not yet available in the eFPS. In view thereof, the following are the work-around procedures to

be adopted by all eFPS filers until such time that the enhanced BIR Form 1702Q becomes available in the eFPS:

- a. eFPS filers who will be paying the normal Income Tax shall file using the existing BIR Form 1702Q available in the eFPS and proceed to Electronic Payment (ePayment);
- b. If their Income Tax due is the Minimum Corporate Income Tax (MCIT), eFPS filers may have the following options:
 - i. They may electronically file their quarterly Income Tax return through the eFPS facility using the existing online BIR Form 1702Q by filling- up the Special Rate Columns. Once the enhanced BIR Form 1702Q becomes available for eFPS filing, taxpayer shall be required to file an amended return.
 - ii. They may also file their return manually by accomplishing BIR Form 1702Q [October 2007 (ENCS)] or the downloadable copy of the BIR form from the BIR's official website. The return must be filed with the corresponding payment to any Authorized Agent Bank (AAB) located within the territorial jurisdiction of the RDO/Large Taxpayers Office where the taxpayer's principal office is registered. If there is no payment required, the taxpayer shall file the abovementioned return with the RDO/Large Taxpayers Office having jurisdiction over the principal office of the taxpayers.
- c. All filers should submit the required Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax at Source (SAWT) through the BIR's official website by clicking the "eSUBMISSION" icon and fill- up all the necessary or required information, such as:
 - i. Taxpayer Identification Number (TIN);
 - ii. Taxpayer's Registered Name;
 - iii. Registered Address; and
 - iv. E- mail Address/es;
- d. Submit the attachments but make sure that the naming convention is observed (the accepted file extension: .dat, .csv within a .zip file), then

click "SEND"; and

- e. Wait for the acknowledgement receipt and a validation report which will be sent to the taxpayer's email address within 24 hours upon e-Submission of the attachments.

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REVENUE MEMORANDUM CIRCULAR NO. 21-2008

Clarifies issues on the persons liable to the tax imposed on the sale, barter or exchange of shares of stocks listed and traded through the Local Stock Exchange (LSE) or through Initial Public Offering (IPO) under Section 127 of the Tax Code and the crediting of tax collection to the appropriate office of the Bureau of Internal Revenue (BIR).

Under Section 127(A) of the Tax Code, it is the duty of the stock broker to file the tax return (BIR Form 2552) and pay the tax due after collecting the same from the seller within five (5) banking days from the date of collection thereof.

The tax collected shall be credited to the BIR office which has jurisdiction over the stockbroker. On the other hand, for tax imposed under Section 127(B), the person liable in the case of "primary offering" is the issuing corporation, while the seller is the one primarily liable in the case of "secondary offering". The Philippine Stock Exchange has defined primary and secondary offering as follows:

- a. Primary offering – is the original sale made to the investing public by the applicant company of its own securities (i.e. primary shares); and
- b. Secondary offering – is an offer for sale made to the investing public by the existing shareholders of their securities which are already issued (i.e. secondary shares)

In computing for the tax due imposed under Section 127(B) of the Tax Code, the proportion of the shares sold over the outstanding shares of stocks after the listing shall be computed to determine the applicable tax rate (e.g. 4%, 2% or 1%). The determined rate shall be multiplied by the Gross Selling Price (GSP) or Gross Value in Money (GVM).

For primary offering, the tax due shall be paid within 30 days from the date of sale thereof and the tax shall be credited to the BIR office having jurisdiction over the issuing corporation. For secondary offering, on the other hand, the time and manner of paying the tax due shall follow the procedures on the payment of tax imposed under Section 127 (A) of the Tax Code.

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**REVENUE MEMORANDUM
CIRCULAR NO. 24-2008**

Clarifies the scope of the term “direct costs and expenses” that should comprise the “cost of services” for purposes of computing the Gross Income subject to the 2% Minimum Corporate Income Tax (MCIT) under Section 27(E) and Section 28(A)(2) of the 1997 Tax Code, as amended.

In computing the gross income subject to the 2% MCIT for sellers of services, “gross income” means gross receipts less sales returns, allowances, discounts and cost of services. “Cost of services” shall mean all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including salaries and employee benefits of personnel, consultants and specialists directly rendering the service; and cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies.

As such, “direct costs and expenses” shall only pertain to those costs exclusively and directly incurred in relation to the revenue realized by the sellers of services. In fine, these refer to costs which are considered indispensable to the earning of the revenue such that without such costs, no revenue can be generated. Thus, expenses and other costs dispensed outside the ambit of what has been defined herein as “direct costs and expenses” are not items allowed for inclusion to “cost of services”, for purposes of computing the gross income subject to the 2% MCIT.

**REVENUE MEMORANDUM
CIRCULAR NO. 25-2008**

This circular is being issued to reiterate certain provisions of Revenue Regulations No. 9-2000 dated August 31, 2000, implementing Section 188 of the National Internal Revenue Code (NIRC), particularly with regard to all educational institutions for the issuance of certificates subject to Documentary Stamp Tax to wit—
“Sec. 3 Mode of Payment and Remittance of Tax. —

xxx xxx xxx xxx

- (4) *When one of the parties to taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code: Provided, however, that if such entity is exempt from tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3 (b) (2) hereof, any provision of these Regulations to the contrary notwithstanding:*

xxx xxx xxx xxx

- (e) *An educational institution in respect of issuance of taxable certificates (e.g. Diploma, Transcript of Records, and other documents taxable as certificates under Section 188 of the Code);*

xxx xxx xxx xxx.”

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**REVENUE MEMORANDUM
CIRCULAR NO. 29-2008**

Clarification on the last day for availing of the benefits under Republic Act No. 9480, otherwise known as, The Tax Amnesty Act of 2007 Section 2 of Republic Act No. 9480, otherwise known as, The Tax Amnesty Act of 2007 provides that the amnesty tax shall be paid “within six months from the effectivity of the IRR”.

Furthermore, Sections 3 & 4, Chapter 2, Book IV of the Administrative Code of 1987 (Executive Order No. 292) pertaining to filing and effectivity of administrative rules and regulations provide that every agency shall file with the University of the Philippines Law Center (UPLC), three (3) certified copies of every rule adopted by it, and each rule shall become effective fif-

teen (15) days from the date of filing with the UPLC.

Based on the certification by the UP Law Center, Office of the National Administrative Register (UPLC-ONAR), the Bureau has learned that the copy of DOF Department Order No. 29-07, dated August 15, 2007, implementing the provisions of R.A. No. 9480, was filed with the UPLC-ONAR only last October 23, 2007. Thus, D.O. No. 29-07 became effective 15 days from October 23 or on November 7, 2007.

In view of all the foregoing, it is hereby clarified that the effectivity of DOF Department Order No. 29-07 commenced on November 7, 2007 and the last day for availing of the benefits of the amnesty shall be six (6) months from November 7, 2007 or on May 5, 2008.

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MEMORANDUM NO. M-2008-05

Guidelines on the Submission of the Disclosure Statement on SPV Transactions.

The following set out the guidelines for the disclosure of information on the sale of non-performing assets (NPAs) to special purpose vehicles (SPVs) and to qualified individuals for housing under "The Special Purpose Vehicle (SPV) Act of 2002" pursuant to Memorandum dated 26 September 2003, as amended by Memoranda dated 16 February 2004 and 2 December 2005, respectively:

(a) Submission of Disclosure Statement

The disclosure statement (Annex A), attached as Annex 2 of Memorandum dated 2 December 2005, shall be submitted on a quarterly basis, within 15 banking days after the end of the reference quarter, to the Supervisory Data Center. The said disclosure statement shall be submitted in hard copy duly notarized and signed by the authorized official of the reporting bank.

(b) Publication/Posting Requirements

The following additional information shall be incorporated in the prescribed form for the Published/Posted Balance Sheet (BS) provided in Circular No. 576 dated 8 August 2007 (Annex B):

“(m) Deferred charges not yet written down; and
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MEMORANDUM NO. M-2008-014

Issuance of Certificate of Eligibility (COE) under the Special Purpose Vehicle (SPV) Act of 2002

Banks and non-bank financial Institutions performing quasi-banking functions are reminded that to be entitled to the tax and fee exemption privileges under the amended Special Purpose Vehicle (SPV) Act, the following transactions must occur not later than May 14, 2008.

1. The transfer of the non-performing loans (NPL) by the financial institution (FI) to an SPV;
2. The transfer of the real and other properties acquired (ROPA) by the FI to an SPV;
3. The dacion in payment (dacion en pago) of the NPL by the borrower to the FI;
4. The dacion in payment (dacion en pago) of the NPL by a third party, on behalf of the borrower, to the FI;
5. The transfer of the NPL (secured by a real estate mortgage on a residential unit) by the FI to an individual; and
6. The transfer of the ROPA (single family residential unit) by the FI to an individual.

The Monetary Board authorized the Supervision and Examination Sector to accept applications for Certificate of Eligibility (COE) until 13 June 2008, or up to 30 days after the 14 May 2008 deadline. For the purpose of determining whether a transaction occurred within the 14 May 2008 deadline, relevant documents to support the application (e.g., Asset Sale and Purchase Agreement, Deed of Assignment, Deed of Dacion, among others) should be notarized not later than 14 May 2008.

