



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

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RECORDS MGT. DIVISION
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April 2, 2012

REVENUE REGULATIONS No. 6-2012

SUBJECT : TAXATION ON THE SALE OF GOLD AND OTHER METALLIC MINERALS TO BANGKO SENTRAL NG PILIPINAS AND OTHER PERSONS OR ENTITIES, AMENDING REVENUE REGULATIONS No. 7-2008, AND FURTHER AMENDING SECTION 2.57.2 (T) OF REVENUE REGULATIONS No- 2-98, AS AMENDED.

TO : BANGKO SENTRAL NG PILIPINAS, ALL INTERNAL REVENUE OFFICERS, AND OTHERS CONCERNED

SECTION 1. Scope. – Pursuant to the provisions of Section 244, in relation to Section 245 of the National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated to supersede Revenue Regulations No. 7-2008, clarify the taxability of sale of gold by any person or entity to another person or entity other than the Bangko Sentral ng Pilipinas (BSP), and further amending Section 2.57.2 of Revenue Regulations No. 2-98, as amended.

SECTION 2. Background. – In a Decision by the Court of Tax Appeals in CTA Case No. 7788, entitled *Bangko Sentral ng Pilipinas vs. Commissioner of Internal Revenue*, dated February 24, 2010, the Court held that should domestic products be removed from the place of production without the payment of excise taxes, the owner or person having possession thereof shall be liable for the tax due thereon, pursuant to Section 130 (A) (1), 2nd Paragraph, of the 1997 NIRC.

Under Section 151 (A) (3) (a), (b) of the 1997 NIRC, there shall be levied assessed and collected on minerals, mineral products and quarry resources, a 2% (since it has been more than 6 years since the effectivity of RA No. 7729) excise tax on all metallic minerals, based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise and value-added tax, in the case of importation.

Possessors of metallic minerals, whether imported or local, must therefore be able to show proof that the excise taxes thereon has been paid. Such proof may include the following: 1) certified true copy of the Authority to Release Imported Goods (ATRIG) and Import Entry and Internal revenue Declaration and Official Receipt issued by the Bureau of Customs, for imported goods; and 2) certified true copy of Excise Tax Return (BIR Form No. 2200M) and machine-validated deposit slip of the bank where payment and filing has been made, for locally bought gold. Absent said proof, possessors of metallic minerals shall be held liable for the excise taxes due thereon.

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In addition, the sale of these metallic minerals is an economic activity subject to regular income tax. In order to ensure the collection of income taxes and monitor the activity of persons engaged in these transactions, sale of gold and other metallic minerals should be subjected to withholding taxes.

SECTION 3. Duties and Obligations (Payment of Taxes). –

- (a) **Excise Tax.** - Metallic minerals are subject to the two percent (2%) excise tax rate based on either the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced; or the value used by the Bureau of Customs in computing tariff and duties, in case of importations. Possessors of said metallic minerals must be able to show proof that the excise tax has been paid thereon, otherwise, they shall be assessed and be held liable for the payment thereof. Metallic minerals discovered in the possession of persons who cannot show proof of payment of excise taxes thereon are presumed to have been removed on the day of discovery. Further, for purposes of this Regulations, possession shall mean, not only the actual, current physical possession of said metallic minerals, but shall likewise cover the inclusion of said minerals in the inventory of a person or entity at any given point in time.
- (b) **Value-Added Tax.** - Sales of metallic minerals to persons and entities, except sale of gold to the Bangko Sentral ng Pilipinas, is subject to twelve percent (12%) Value-Added Tax if the value thereof exceeds the threshold set by the 1997 NIRC and existing issuances.

Sales of gold to the Bangko Sentral ng Pilipinas is subject to Value-Added Tax at the rate of zero percent (0%) as prescribed under Section 106 (A) (2) (a) (4) of the 1997 NIRC, if the seller is a VAT registered taxpayer.

- (c) **Income Tax.** – Sellers are subject to Income tax at the rate prescribed under Section 24 (A) in case of individual taxpayers, and under Section 27 (A) of the 1997 NIRC in the case of corporations. Further, buyers of said metallic minerals are required to withhold five percent (5%) of gross payments made and remit the same to the Government.

Section 2.57.2(T) of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 17-2003, is hereby further amended as follows:

“(T) Income payments on purchases of minerals, mineral products and quarry resources as defined and discussed in Section 151 of the Code.- Income payments on purchases of minerals, mineral products and quarry resources, such as but not limited to silver, gold, marble, granite, sand, boulders and other materials/products –Five percent (5%) ”

In order for a seller/possessor of said metallic mineral to be able to claim the costs of said metallic mineral, said seller/possessor must be able to show proof of

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withholding and remittance of the five percent (5%) withholding tax on said product, otherwise all claimed costs and expenses associated therewith shall be disallowed.

SECTION 4. Mode of Collection and Payment of Taxes. – All buyers of metallic minerals are hereby constituted as agents for the collection of the two percent (2%) excise tax on metallic minerals and the five percent (5%) creditable withholding tax thereon.

All penalties under existing laws and Regulations shall attach to buyers who fail to withhold and/or pay said taxes.

SECTION 5. Time and Manner of Filing and Payment of Taxes Withheld. – All excise taxes and creditable withholding taxes collected from payments made to sellers of metallic minerals shall be remitted to the BIR by filing the corresponding Excise Tax Return (BIR Form No. 2200-M) and the Creditable Withholding Tax Return (BIR Form No. 1601-E) and paying the amount of taxes withheld to the Accredited Agent Bank (AAB) having jurisdiction over its principal place of business on or before the tenth (10th) day of the following month.

Illustration :

- (a) Sale by a small-scale miner to a middleman/trader of 10 ounces of gold with actual market value of P2,000/ounce for P15,000

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| (i) | Excise taxes due | = Php 400.00 or $(10 \text{ oz.} \times P 2,000 \times 2\%)$ |
| (ii) | Creditable Withholding Tax due | =Php 750.00 or $(P 15,000 \times 5\%)$ |

- (b) Sale by a middleman/trader of 10 ounces of gold with actual market value of P2,100/ounce for P20,500 to the BSP

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| (i) | Excise taxes due | =Php 0.00 |
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This is assuming that the middleman/trader can prove that the excise taxes on the said gold has been withheld and remitted to the BIR. If it cannot prove said fact of payment pursuant to issuances that will be released later on, it is liable for the payment of excise taxes on the entire actual market value, thus:

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| | Excise tax due | =Php 420 or $(10 \text{ oz.} \times P 2,100 \times 2\%)$ |
| (ii) | Creditable Withholding Tax due | =Php 1,025 $(P 20,500 \times 5\%)$ |

For the middleman/trader to be able to claim the expenses/cost attributable to his purchase of gold in his final income tax return, he must be able to produce proof of withholding and remittance of creditable income taxes withheld from the seller. Otherwise, the costs/expenses attributable to said purchases shall be disallowed for income tax purposes.

- (c) Purchase by BSP of gold – the BSP, regardless whoever is selling, is obliged to collect the 2% excise tax on the actual market value of the gold sold to it, regardless of the purchase price it paid for the transaction, and remit the same to the BIR. If the seller is able to produce

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proof of payment of excise taxes on said goods, the BSP shall not be liable anymore for payment of excise taxes.

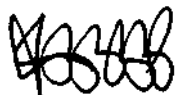
BSP is likewise obliged to withhold and remit to the BIR the Creditable Withholding Taxes due from the sale, regardless whoever is selling.

The withholding tax return shall be filed and payment shall be made within ten (10) days after the end of each month, except for taxes withheld for the month of December, which shall be filed on or before January 15 of the following year.

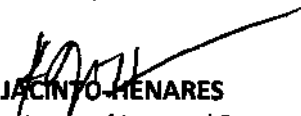
However, if the BSP availed of the Electronic Filing and Payment System (EFPS), the deadline for electronic filing of the applicable withholding tax returns (BIR Form No. 1601-E) and payment of taxes due thereon remains on the 15th day of the following month.

SECTION 6. Repealing Clause.- Revenue Regulations No. 7-2008 is hereby superseded, while all other regulations, orders or portions thereof which are inconsistent with the provisions of these Regulations are hereby amended, modified, or repealed accordingly.

SECTION 7. Effectivity Clause. – These Regulations shall take effect immediately.


CESAR V. PURISIMA
Secretary of Finance
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Recommending Approval:


KIM S. JACINTO-MENARES
Commissioner of Internal Revenue

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