

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

February 15, 2013

REVENUE MEMORANDUM CIRCULAR NO. 17-2013

SUBJECT : Clarifying the Taxes Due From Financial or Technical Assistance Agreement (FTAA) Contractors During "Recovery Periods"

TO : All Revenue Officials, Employees and Others Concerned

Pursuant to Section 4 (Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases) of the National Internal Revenue Code (NIRC) of 1997, this Circular is being issued to clarify the taxes due from Financial or Technical Assistance Agreement (FTAA) Contractors during "Recovery Periods."

BACKGROUND:

Section 81 of Republic Act (RA) No. 7942, otherwise known as the Philippine Mining Act of 1995, provides:

**"CHAPTER XIV
GOVERNMENT SHARE**

SECTION 81. Government Share in Other Mineral Agreements. — The share of the Government in co-production and joint-venture agreements shall be negotiated by the Government and the contractor taking into consideration the: (a) capital investment of the project, (b) risks involved, (c) contribution of the project to the economy, and (d) other factors that will provide for a fair and equitable sharing between the Government and the contractor. The Government shall also be entitled to compensations for its other contributions which shall be agreed upon by the parties, and shall consist, among other things, the contractor's income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholders, in case of a foreign national, and all such other taxes, duties and fees as provided for under existing laws.

The Government share in financial or technical assistance agreement shall consist of, among other things, the contractor's corporate income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend

or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.

The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive. (Emphasis supplied)

CLARIFICATION:

The National Internal Revenue Code (NIRC) of 1997 and other related laws provide for the taxes and fees that are applicable to a mining company operating in the Philippines. On the other hand, the non-collection of the “government share” during the “recovery period” of FTAA Contractors referred to in RA 7942 or the Philippine Mining Act of 1995 is not tantamount to an express grant of tax exemption. Even the pertinent provisions of the RA 7942 do not mention any such type of exemption, thus:

“CHAPTER XV TAXES AND FEES

SECTION 83. Income Taxes. — After the lapse of the income tax holiday as provided for in the Omnibus Investments Code, the contractor shall be liable to pay income tax as provided in the National Internal Revenue Code, as amended.

SECTION 84. Excise Tax on Mineral Products. — The contractor shall be liable to pay the excise tax on mineral products as provided for under Section 151 of the National Internal Revenue Code: Provided, however, That with respect to a mineral production sharing agreement, the excise tax on mineral products shall be the government share under said agreement. (Emphasis supplied)

It is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law.¹

Accordingly, FTAA contractors are liable to pay the taxes due under the NIRC and existing rules and regulations during and after their “recovery period.” This payment is in the nature of compliance with tax obligations and not in the nature of settling the “government share” under the FTAA.

¹ Commissioner of Internal Revenue vs. General Foods (Phils.), Inc., G.R. No. 143672 dated April 24, 2003

In this regard, *BIR Ruling Nos. 010-07 dated May 4, 2007 and 008-07 dated April 3, 2007* are hereby revoked and invalidated, and all revenue issuance inconsistent with this Circular are hereby repealed, amended or modified accordingly.

This Circular shall take effect immediately.

All internal revenue officers and others concerned are enjoined to give this Circular as wide as publicity as possible.

(Original Signed)

KIM S. JACINTO-HENARES

Commissioner of Internal Revenue