

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Date: November 21, 2008

REVENUE MEMORANDUM CIRCULAR NO. 76 – 2008

SUBJECT : Construction Agent for the Construction or Renovation of Official Buildings or Properties of the United States of America Embassy and Amendments to Revenue Memorandum Circular No. 31-2006

TO : All Revenue Officers and Others Concerned

SECTION 1. Purpose. – This Circular is issued to recognize the Construction Agent officially named / chosen by the Embassy of the United States of America in the Philippines (U.S. Embassy) in connection with the construction or renovation of the diplomatic properties of the U.S. Embassy.

SECTION 2. Amendment of Section 3, RMC 31-2006. – Section 3 of Revenue Memorandum Circular (RMC) No. 31-2006 shall be amended to read as follows: (amendments are underscored)

“**SECTION 3. Construction Agent.** – For the U.S. Embassy’s pending major construction / renovation projects, the USA Department of State will select an entity to serve as its Construction Agent.

“This Bureau shall recognize the construction agent, as chosen by the U.S. Department of State, upon receipt of a Note Verbale from the U.S. Embassy in the Philippines, duly indorsed by the Department of Foreign Affairs (DFA), with the information as to the name of such entity and accompanied with a copy of:

“(1) the contract establishing the agency relationship between the U.S. Embassy in the Philippines and the entity, and

“(2) the Special Power of Attorney (SPA) executed by the U.S. Embassy in favor of such entity. The SPA shall specifically state the name of the particular project for which the chosen entity is granted the power to act as a construction agent and the fact and extent to which such construction agent is authorized to make purchases for the U.S. Embassy project. The name of the entity and a copy of it’s SPA shall be duly circularized for the information of all Bureau officials and personnel concerned.

“The construction Agent, as a separate entity, shall be taxed in accordance with the provisions of National Internal Revenue Code or relevant tax treaty, as applicable.”

SECTION 3. Amendment of Section 4, RMC 31-2006. – Section 4 of RMC 31-2006 shall now be amended to read as follows:

“SECTION 4. Makati Development Corporation as Construction Agent of the U.S. Embassy. – The Bureau of Internal Revenue (BIR) recognizes Makati Development Corporation (MDC) as the U.S. Embassy’s Construction Agent, pursuant to Note Verbale No. 0488 dated 14 April 2008 from the Embassy of the United States in the Philippines (U.S. Embassy), duly indorsed to the BIR by the DFA, declaring MDC as it’s Construction Agent for purposes of Section 3 of RMC 31-2006, as amended; the contract establishing the agency relationship between the U.S. Embassy and MDC; and the Special Power of Attorney (SPA) executed by the U.S. Embassy in favor of MDC (Annex B* hereof).

“The MDC is granted the power to act as a Construction Agent and is authorized to make purchases for the U.S. Embassy project pursuant to the provisions of RMC 31-2006.

“The MDC shall continue to be taxed in accordance with the provisions of the National Internal Revenue Code of 1997, as applicable.”

SECTION 4. Amendment of Section 4 of RMC 31-2006. – Section 4 (Subcontractors and Vendors) shall be renumbered as SECTION 5 as follows:

“SECTION 5. Subcontractors and Vendors. – This Bureau shall only recognize subcontractors or vendors for the project, based on a notification made by the U.S. Embassy . . . xxx”

SECTION 5. Amendment of Section 5, RMC 31-2006 – Section 5 of RMC. 31-2006 shall be amended to read as follows: (amendments are underscored)

“SECTION 6. VAT Zero-rating. – To the extent that MDC is authorized to act for and on behalf of the U.S. Embassy, MDC shall be allowed to make local purchases of supplies, goods and services, for and on behalf of the U.S. Embassy, and avail of VAT exemption on the purchases of the embassy, at the point of sale, on the strength of the Certification issued by the BIR to

* Please note that Annex “A” is the Certification to confirm exemption mentioned in Section 8 of RMC 31-2006 to be renumbered herein as Section 10.

MDC, based on and citing the VAT Exemption Certificate of the U.S. Embassy and confirming its status as Construction Agent of the U.S. Embassy authorized to make purchases on behalf of the Embassy.

"The sale to the construction agent, acting on behalf of the U.S. Embassy of **goods** for the specific construction/ renovation projects covered by this Circular shall be considered as zero-rated transactions, pursuant to Section 4.106-5(c) of Revenue Regulations No. 16-2005, as amended.

"The sale to the construction agent, acting on behalf of the U.S. Embassy, of *services* for the specific construction/renovation projects covered by this Circular shall be considered as zero-rated transactions, pursuant to Section 4.108-5(b)(3).

"This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the U.S. Embassy in relation to the subject construction/ renovation projects, and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 16-2005, as amended, effective as of the date of the issuance of this Circular."

SECTION 6. Amendment of Section 6, RMC 31-2006. – Section 6 (Invoice / Receipt) of RMC 31-2006 shall be renumbered as Section 7 as follows:

"**SECTION 7. Invoice / Receipt.** – Suppliers of the U.S. Embassy for the projects covered by this Circular must issue a VAT invoice / receipt for each sale, . . . xxx"

SECTION 7. Amendment of Section 7, RMC 31-2006. – Section 7 of RMC No. 31-2006 shall be renumbered as SECTION 8 as follows: (amendments are underscored)

"**SECTION 8. Review of Invoices.** – As a method of controlling and protecting the U.S. Embassy's eligibility for tax relief privileges, a representative from the U.S. Embassy shall review / validate the invoices for such purchases and annotate in the U.S. Embassy's certification that the purchases are in fact associated with the completion of the construction / renovation project.

"Certified copies of invoices reviewed including a summary thereof, approved by the U.S. Embassy, shall also be submitted by the U.S. Embassy to the International Tax Affairs Division (ITAD) of this Bureau, through the DFA. The invoices shall be forwarded by the ITAD to Revenue District

Office No. 50, Pasay City of this Bureau, for verification, on a monthly basis."

SECTION 8. Amendment of Section 8, RMC 31-2006. – Section 8 (Verification of Exemption) of RMC 31-2006 shall be renumbered as SECTION 9 as follows:

'SECTION 9. Verification of Exemption. – In the event a subcontractor or vendor does not honor the VAT exemption of the Embassy . . . xxx"

SECTION 9. Amendment of Section 9, RMC 31-2006. – Section 9 (Imported Materials) of RMC 31-2006 shall be renumbered as SECTION 10 as follows:

"SECTION 10. Imported Materials. – Materials imported for use in the construction or renovation of the Embassy's facilities . . . xxx"

SECTION 10. Amendment of Section 10, RMC 31-2006. – Section 10 (Repealing Clause) of RMC 31-2006 shall be renumbered as SECTION 11 as follows:

"SECTION 11. Repealing Clause. – Pertinent provisions of Revenue Memorandum Order No. 22-2004 . . . xxx"

SECTION 11. Amendment of Section 11, RMC 31-2006. – Section 11 (Effectivity) of RMC 31-2006 shall be renumbered as SECTION 12 as follows:

"SECTION 12. Effectivity. – This Circular shall take effect immediately."

SECTION 12. Supplement to RMC 31-2006; Repealing Clause – This Circular shall supplement RMC 31-2006. Pertinent provisions of RMC 31-2006 and of other relevant revenue issuances which are inconsistent with the provisions of this Circular are hereby revised and amended accordingly, but only insofar as they apply to the subject matter of this Circular.

SECTION 13. Effectivity – This Circular shall take effect immediately.

(Original Signed)
SIXTO S. ESQUIVIAS IV
Commissioner of Internal Revenue