REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

August 17, 2005

REVENUE MEMORANDUM ORDER NO. 23-2005

Subject: Audit/Investigation of Withholding Tax Liabilities for Taxable Years 2003 and 2004 Including Withholding Tax on Fringe Benefits

To : All Regional Directors, Revenue District Officers (RDOs), Chiefs of the Assessment Divisions of Regional Offices, and All Internal Revenue Officers Concerned

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I. Objectives

1. To encourage compliance with withholding tax laws and regulations through quality audit of accounts subject to withholding tax with particular emphasis on items constituting fringe benefits;

2. To prescribe uniform policies and procedures in the audit of 2003 and 2004 withholding tax liabilities by Revenue District Offices; and

3. To strengthen the audit of withholding tax/fringe benefits tax by giving focus on the examination of expense accounts, with particular attention on the investigation of the nature of the accounts, for potential items of fringe benefits which were not subjected to withholding tax/fringe benefits tax.

II. Coverage/Selection Criteria

This Order shall cover the withholding tax liabilities of the following individual and corporate taxpayers for all the months/quarters in year 2003 and 2004:

1. General professional partnerships;

2. Top 100 corporate taxpayers per district office whose income tax returns disclose upon pre-audit:

    a. a higher growth rate of cost of sales plus operating expenses than the growth rate of sales compared to the figures of the preceding year

b. abnormal increase in the amount of a particular item(s) of expense

3. Taxpayers with third party information;

4. Taxpayers with substantial reduction in withholding tax remittances in 2004 as compared to 2003 data; and

5. Closely-held corporations and family corporations; (In case of closely-held corporations where the recipient of fringe benefits is the controlling stockholder, the BIR will consider the issuance of a Letter of Authority (LA) for the audit of the income tax of the controlling stockholder.)

III. Policies and Procedures

1. The Revenue District Officer shall draw a list of taxpayers selected for audit. The cases to be recommended by the Revenue District Officers shall be identified as those taxpayers with the highest potential in accordance with the selection criteria prescribed in this order.

   The list shall state the name of the taxpayer, taxable year, criterion/criteria for selection, name of the revenue officer and name of the group supervisor.

2. The Regional Director and Assistant Commissioner-Assessment Service (ACIR-AS) shall ensure that taxpayers to be audited/investigated by the RDOs under this program are not among those under audit by the investigating divisions/teams in the National Office.

3. The audit of the withholding tax/fringe benefits tax under this Revenue Memorandum Order shall be separate from the audit of other internal revenue taxes being conducted by the different Revenue District Offices.

4. The said list shall be submitted by the Revenue District Officer to the Regional Director on or before September 30, 2005 for approval/disapproval. Copies of the aforesaid approved/disapproved list shall be submitted, on or before October 5, 2005, by the Regional Director to the Deputy Commissioner-Operations Group (DCIR-OG) for evaluation as to the correctness of the action of the subordinate officials.

The DCIR-OG shall forward copy thereof to the ACIR-AS for recording purposes as well as for other appropriate action, and to the Assistant Commissioner-Inspection Service (ACIR-IS), if warranted.

LAs/ANs may already be issued by the Regional Director once the list of taxpayers chosen to be audited has been approved. The DCIR-OG may, however, order cancellation of LA/AN if upon evaluation of the submitted list it is found out that a violation of this RMO has been committed.

5. Only Revenue Officers-Assessment Group shall be authorized to conduct audit and investigation of tax cases. The RO/Group Supervisor (GS) assigned to investigate a particular taxpayer should not be the same RO/GS for the following year.

6. In no case shall the number of LA cases handled for withholding tax only by a Revenue Officer exceed five (5) cases at any one time, subject to replenishment after the submission of the report of investigation/closure of each case.

7. LAs/ANs shall be issued only when the duplicate copy of the withholding tax returns for all the months/quarters of 2003 and 2004 covered by the LA/AN is attached thereto. The tax returns should be retrieved from within the Bureau, and not from the taxpayers.

8. Revenue Officers shall strictly follow the applicable audit procedures and techniques provided for under Revenue Audit Memorandum Order No. 1-2000, shall be guided by Revenue Regulations No. 3-98 on the special treatment of fringe benefits and shall comply with the reporting requirements prescribed under Revenue Memorandum Order No. 53-98.

9. The Revenue Officer shall utilize data obtained from Third Party Information (TPI) sources or any record available in the Bureau that may provide valuable basis for the determination of the taxpayer's true tax liabilities prior to the finalization of the audit.

10. Audits of all cases covered by LAs/ANs shall be completed and corresponding reports thereon shall be submitted by the Revenue Officer within 90 days from issuance of the LA/AN.

    In case the report cannot be rendered within the prescribed period due to constraints attributable to the taxpayer, the Revenue Officer may request for the revalidation of the LA/AN for the same period.

11. Only one revalidation of the LA/AN shall be allowed provided the Revenue Officer shall render a progress report on the case duly noted by the Group Supervisor and approved by the Revenue District Officer. The previously issued LA/AN shall be stamped “Revalidated on ___________” and shall be signed by the Regional Director.

12. BIR Forms 0500 Series shall be accomplished completely and accurately for all reports of investigation in accordance with the prescribed reporting requirements under RMO No. 53-98.

13. The Assessment Division shall review all dockets covered by LAs/ANs prior to the issuance of a preliminary/final assessment notice, termination letter, and tax credit certificate or refund check, in case of claims for tax credit or refund on excess or erroneous remittance of withholding taxes. In case the reviewers in the Assessment Division discover certain additional deficiency taxes as a result of their audit review or find that the taxpayers are excessively assessed or require compliance with certain procedures or submission of additional necessary documents, the dockets of the case shall be returned to the originating investigating office for appropriate action. The reviewing officer shall, in no case, be allowed to make any adjustments to the audit reports submitted by the investigating office.

14. In the event that no substantial findings on FBT and withholding tax have been assessed/collected for a particular taxpayer after review of a higher authority, the same can be exempted from audit selection for the succeeding year.

15. The preparation, approval and release of Assessment Notices and Demand Letters as well as the preparation of BIR Form 40.00 shall be in accordance with the provisions of Revenue Memorandum Order No. 37-94, as amended by Revenue Memorandum Order No. 36-99. All protests on assessments shall be evaluated and acted upon in accordance with the provisions of Revenue Regulations No. 12-99.

16. The Regional Director shall maintain a register of all LAs/ANs issued by him. All issuances, revalidations, cancellations, case closures, assessments and other matters in relation to LAs should be entered in the LA/AN Register. Entries in the register must be complete and updated at all times. Where the LA Monitoring System has been rolled out, the system should be utilized as to the functionalities available.

IV. REPORTING REQUIREMENTS

All applicable reports prescribed under existing revenue issuances shall be accomplished by the Regional Directors, Revenue District Officers, Chiefs of Assessment Divisions in the Regional Offices, Group Supervisors and Revenue Officers in the district office.

V. Repealing Clause

This Order supersedes all revenue issuances or portions thereof inconsistent herewith.

VI. Effectivity

This Order shall take effect immediately.

(Original Signed)
JOSE MARIO C. BUÑAG
OIC - Commissioner of Internal Revenue

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