

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

March 17, 2010

REVENUE MEMORANDUM CIRCULAR NO. 25-2010

SUBJECT : Publishing the full text of the Memorandum of Agreement between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General

TO : All Internal Revenue Officers and Others Concerned

For the information and guidance of all concerned, quoted hereunder is the full text of the Memorandum of Agreement (MOA) between the Bureau of Internal Revenue (BIR) the Office of the Solicitor General (OSG) signed on March 17, 2010, at the BIR National Training Center Auditorium, BIR, National Office, Diliman, Quezon City.

“MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement entered into by and between:

The **BUREAU OF INTERNAL REVENUE (BIR)**,
represented herein by the Commissioner of Internal Revenue
JOEL L. TAN-TORRES, holding office at the BIR National Office
Building, Diliman, Quezon City,

and

The **OFFICE OF THE SOLICITOR GENERAL (OSG)**,
represented herein by Solicitor General **ALBERTO C. AGRA**,
holding office at 134 Amorsolo Street, Legazpi Village, Makati
City.

WHEREAS, in the Resolution promulgated on 04 July 2002 in G.R. No. 144942 entitled *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory*, the Supreme Court En Banc ruled that *"it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings."*

WHEREAS, Republic Act No. 9282 and the recent Supreme Court *En Banc* resolution dated 22 November 2005, among others, clarified the jurisdiction of the respective courts of the Philippine Judicial System regarding internal revenue taxes (disputed assessments and claims for refund), civil collection cases, criminal offenses and other matters arising from the National Internal Revenue Code of 1997 and other laws administered by the BIR.

WHEREAS, there is a need to clearly define the responsibilities of both parties in handling tax cases and foster closer coordination between the BIR and the OSG to facilitate the preparation and filing of petitions for review, comments, memoranda, briefs, and other pleadings.

NOW, THEREFORE, in consideration of the foregoing premises, the parties hereto agree as follows:

A. CONTACT PERSONS

1. FOR THE BIR:

The handling lawyer assigned to the case and the Chief of the Litigation Division, National Office, or the Chief, Legal Division, Regional Office, as the case may be.

2. FOR THE OSG:

The handling Associate Solicitor, Assistant Solicitor General and Solicitor General.

B. HANDLING CASES

1. Cases of first instance before the Court of Tax Appeals Divisions, Municipal Trial Courts, Metropolitan Trial Courts, Municipal Circuit Trial Courts, Regional Trial Courts, Department of Justice and other administrative agencies.
 - a. The BIR handling lawyers shall be the lead lawyer. As lead lawyer, he/she shall have the following responsibilities”
 - i. To appear before the courts; and
 - ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.
 - b. Upon assignment of the case, the BIR handling lawyer shall ensure that the OSG shall be furnished with a copy of pleadings filed in relation to the case through registered mail.
2. Cases appealed before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*.
 - a. The OSG hereby deputizes BIR handling lawyers to:
 - i. Appear before the Courts; and
 - ii. Continue the prosecution/litigation of appealed tax cases before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*.

The BIR handling lawyer shall have the following responsibilities:

- i. To appear before courts; and
 - ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.
- b. The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.

3. Cases appealed before the Supreme Court.

- a. The OSG handling Associate Solicitor shall be the lead lawyer and the BIR handling lawyer will turn over the case records to the former.
- b. Immediately upon receipt of the resolution of the Court of Tax Appeals En Banc denying the motion for reconsideration, the BIR handling lawyer shall inform the OSG of such decision and forward the entire case file to the OSG Associate Solicitor within two (2) days from receipt of the decision.
- c. The BIR shall prepare a summary of facts, to help assist the OSG to determine/evaluate whether the case should be pursued or not.
- d. In case the OSG is of the opinion than the appeal before the Supreme Court should not be pursued, it shall inform the BIR of its position within ten (10) days from its receipt of the Decision, but it should be at least three (3) working days before the lapse of the period to appeal. In these cases, it shall be the responsibility of the OSG to file the necessary Motion for Extension of Time to File Petition for Review before the Supreme Court.
- e. In the event that the OSG pursues an appeal before the Supreme Court, the OSG handling Associate Solicitor shall have the following responsibilities:
 - i. To appear before the Supreme Court.
 - ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications, etc. In connection with the case.
 - iii. To furnish copies thereof to the BIR handling lawyer, through registered mail.
- f. In the prosecution/litigation of the appealed case, the handling lawyer of the Bureau should make himself/herself available for consultation with the OSG handling lawyer regarding the case.

4. In case of favourable resolutions/decisions, the BIR handling lawyer is under obligation to obtain the necessary court orders for the enforcement of the decision/resolutions. Thus, in cases decided by the Supreme Court in BIR's favour, the Assistant Solicitor shall return the case records with the original final decision within fifteen (15) days from receipt thereof.

C. CASES PENDING WITH THE COURT OF TAX APPEALS EN BANC AND THE COURT OF APPEALS AS OF THE DATE OF EXECUTION OF THIS AGREEMENT.

- a. The BIR and the OSG shall continue with existing arrangements regarding all cases pending in the Court of Appeals and Court of Tax Appeals En Banc prior to the execution of this agreement.
- b. When the BIR receives an adverse resolution of its Motion for Reconsideration in the Court of Appeals and Court of Tax Appeals En Banc, the BIR handling lawyer shall inform the handling OSG Assistant Solicitor of such resolution and forward the entire case file to the OSG Associate Solicitor within two (2) days from its receipt of the resolution.
- c. In case the OSG is of the opinion that an appeal before the Supreme Court should not be pursued, it shall inform the BIR of its position within ten (10) days from its receipt of the Decision, but it should be at least three (3) working days before the lapse of the period to appeal. In these cases, it shall be the responsibility of the OSG to file the necessary Motion for Extension of Time to File Petition for Review before the Supreme Court.
- d. In the event that the OSG pursues an appeal before the Supreme Court, the OSG handling Associate Solicitor shall have the responsibilities set forth in paragraph B (3) (d).

D. EFFECTIVITY OF THE AGREEMENT

This Agreement shall take effect immediately upon signing thereof.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this 17th day of March, 2010.

(Original Signed)
JOEL L. TAN-TORRES
Commissioner of Internal Revenue

(Original Signed)
ALBERTO C. AGRA
Solicitor General

WITNESSES:

(Original Signed)
MARISSA O. CABREROS
OIC-ACIR Legal Service

(Original Signed)
GREGORIO V. CABANTAC
DEPCOM, Legal and Enforcement Service"

All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

(Original Signed)
JOEL L. TAN-TORRES
Commissioner of Internal Revenue