

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

October 26, 2010

REVENUE REGULATIONS NO. 11-2010

SUBJECT : Further Clarifying the Term “Managerial and Technical Positions” Under Section 2.57.1(D) of Revenue Regulations (RR) No. 2-98, as Amended, by RR No. 12-2001, Implementing Section 25(C) of the National Internal Revenue Code of 1997 (Tax Code), as Amended and Modifying for this Purpose Revenue Memorandum Circular (RMC) No. 41-09 Including Guidelines on Availment of the Fifteen Percent (15%) Preferential Income Tax Rate for qualified Filipino personnel employed by Regional or Area Headquarters (RHQs) and Regional Operating Headquarters (ROHQs) of multinational companies

TO : All Revenue Officials and Personnel and Others Concerned

SECTION 1. Background. - On July 23, 2009 Revenue Memorandum Circular (RMC) No. 41-09 was issued essentially defining the terms managerial and/or technical positions of Filipino personnel employed by Regional or Area Headquarters (RHQs) and Regional Operating Headquarters (ROHQs) of multinational companies. The phrase “managerial and technical positions” appears in Section 2.57.1(D) of Revenue Regulations (RR) No. 2-98, as amended by, among others, RR No. 12-2001, implementing Section 25(C) of the Tax Code. Thus:

“(D) Income Derived by Alien Individuals Employed by Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies. – A final withholding tax equivalent to fifteen percent (15%) shall be withheld by the withholding agent from the gross income received by every alien individual occupying **managerial and technical positions** in regional or area headquarters and regional operating headquarters and representative offices established in the Philippines by multinational companies as salaries, wages, annuities, compensation, remuneration, and other emoluments, such as honoraria and allowances, except income which is subject to fringe benefits tax, from such regional or area headquarters and regional operating headquarters.

The same tax treatment shall apply to Filipinos employed and occupying the same positions as those aliens employed by regional or area headquarters and regional operating headquarters of multinational companies, regardless of whether or not there is an alien executive occupying the same position. Provided, that such Filipinos shall have the option to be taxed at either 15% of gross income or at the regular rate on

their taxable income in accordance with the Tax Code of 1997, if the employer (Regional or Operating headquarters/Regional or Area headquarters) is governed by Book III of E.O. 226, as amended by R.A. No. 8756. In case the Filipino opted to be taxed at the regular tax rate under Sec. 24 of the Tax Code of 1997, the provisions of Sec. 2.79(A) to (D) of Revenue Regulations No. 2-98 shall apply.

The term “multinational company” means a foreign firm or entity engaged in international trade with its affiliates or subsidiaries or branch offices in the Asia-Pacific Region and other foreign markets.” (emphasis supplied)

In defining the term “managerial employee”, RMC No. 41-09 cited *Philippine Appliance Corp. vs. Laguesma*, 226 SCRA 730 (1993) and *Villuga vs. NLRC*, 225 SCRA 537 (1993).

RMC No. 041-09 also defined the term “technical position” as being limited only to positions that are highly technical in nature or where there are no Filipinos who are competent, able and willing to perform the services for which the aliens are desired.

Finally, the language of RMC No. 41-09 implied that in order to enjoy the fifteen percent (15%) final income tax rate on their gross compensation income, Filipino nationals in ROHQs or RHQs must be employed in a managerial and highly technical position.

Thus, the issuance of RMC No. 41-09 has resulted in some confusion among the tax treatment of Filipinos employed by ROHQs or RHQs. These regulations are therefore being issued to clarify the provisions of Section 2.57-1(D) of RR No. 2-98, as amended.

SECTION 2. Who are qualified. – Filipinos employed by ROHQs or RHQs in a managerial or technical position shall have the option to be taxed at either fifteen percent (15%) of their gross income or at the regular income tax rate on taxable compensation income in accordance with Section 24 of the Tax Code, if the employer is governed by Book III of Executive Order (EO) No. 226, as amended by Republic Act (RA) No. 8756. All other employees are considered as regular employees who are subject to the regular income tax rate on their taxable compensation income.

SECTION 3. – Eligibility to the 15% Preferential Tax Rate. – Filipinos exercising the option to be taxed at fifteen percent (15%) preferential rate for occupying the same managerial or technical position as that of an alien employed in an ROHQ or RHQ must meet all the following requirements:

- (a) Position and Function Test. - The employee must occupy a managerial position or technical position AND must actually be exercising such managerial or technical functions pertaining to said position;

- (b) Compensation Threshold Test - In order to be considered a managerial or technical employee for income tax purposes, the employee must have received, or is due to receive under a contract of employment, a gross annual taxable compensation of at least PhP 975,000.00 (whether or not this is actually received); *Provided* that, a change in compensation as a consequence of which, such employee subsequently receiving less than the compensation threshold stated in this section shall, for the calendar year when the change becomes effective, result in the employee being subject to the regular income tax rate.

Beginning December 31, 2013 and on December 31 every three years thereafter, the compensation threshold shall be adjusted to its present value using the Philippine Consumer Price Index (CPI), as published by the National Statistics Office. The adjusted compensation, shall take effect not earlier than the first day of the calendar month immediately following the issuance of a corresponding Revenue Memorandum Circular (RMC) on the matter.

For clarity in the implementation hereof, the formula for determining the adjusted compensation threshold shall be:

$$\begin{array}{rcl} \text{Adjusted} & & \text{Previous} \\ \text{threshold} & = & \text{threshold} \\ \text{amount} & & \text{amount} \end{array} \times \frac{\text{CPI for the current year}}{\text{CPI for the previous revaluation year}}$$

- (c) Exclusivity Test – The Filipino managerial or technical employee must be exclusively working for the RHQ or ROHQ as a regular employee and not just a consultant or contractual personnel. Exclusivity means having just one employer at a time.

SECTION 4. Gross Compensation. - Under Section 2.78.1(A) of RR No. 2-98, as amended, gross compensation includes salaries, wages, emoluments and honoraria, allowances, commissions and fees (including director’s fees if the director is at the same time an employee of the employer), taxable bonuses, and fringe benefits (except those that are subject to fringe benefits tax).

Section 2.79(B)(3) of RR No. 2-98, as amended, categorizes taxable compensation income into regular taxable compensation income and supplementary compensation income. Under the said regulations, regular taxable compensation income includes basic salary, fixed allowances for representation, transportation and other allowances paid to an employee per payroll period. Supplementary compensation is defined by the same regulations as payments made to an employee in addition to the regular compensation such as commission, overtime pay, taxable bonus and other taxable benefits, with or without regard to a payroll period.

For purposes of determining the compensation threshold under Section 3(b) of these regulations, gross compensation shall not include retirement and/or separation pay/benefits (whether or not taxable), as well as items considered as *de minimis* benefits. Provided that the foregoing shall be considered in determining the income tax due at the time of the employee's retirement or separation.

SECTION 5. Manner of Computation of Tax - At the start of the year or at the start of the employee's employment, as the case may be, it is important to determine whether the employee shall receive, or is due to receive under a contract of employment, a gross annual compensation equivalent to or above the compensation threshold stated in Section 3(b) of these regulations. The determination should, as far as practicable, include both regular taxable compensation income and supplementary compensation income.

The withholding tax regime applicable to employees who opted to be subjected to the fifteen percent (15%) final withholding tax rate is different from the withholding tax on compensation imposed on regular employees. This is primarily evidenced by the reporting requirements for final withholding tax (BIR Form No. 1601-F), applicable to employees subject to the final withholding tax of fifteen percent (15%), as differentiated from the reporting requirements for withholding tax on compensation (BIR Form No. 1601-C).

Consequently, where an employee who is subject to the fifteen percent (15%) final withholding tax rate works for more than one employer which are both ROHQs or RHQs at any one time in a taxable year, then such employers need not annualize the employee's compensation. The annualized withholding method as provided under Section 2.79(B)(5)(b) of RR No. 2-98, as amended, will only apply in the case of employees, having more than one employer in a calendar year, whose income is subject to withholding tax on compensation. On the other hand, when during the same year, an employee is subject to both the fifteen percent (15%) final withholding tax rate and the regular income tax rate, then the employer under whom the employee is subject to the regular income tax rates shall annualize that employee's compensation that was subject to the regular income tax rates.

The determination of whether or not the employee qualifies for the final withholding tax rate of fifteen percent (15%) shall be made on a yearly basis.

In cases where the total compensation cannot be determined at the start of the year or employment, the option to be taxed at fifteen percent (15%) cannot be exercised.

EXAMPLE 1: At the start of the year, Mr. A, a Filipino holding a managerial position in an RHQ, receives a monthly salary and cost of living allowance in the amount of PhP70,000.00 and PhP7,000.00 respectively. His employment contract also states that he may receive a performance bonus at the end of the year which amount is not presently determinable. Since Mr. A is due to receive, under an employment contract, a regular taxable compensation income of PhP994,000.00

composed of PhP840,000.00 (PhP70,000.00 x 12 months) basic pay, PhP70,000.00 13th month pay and PhP84,000.00 (PhP7,000.00 x 12 months) cost of living allowance, placing him above the compensation threshold of PhP975,000.00, then he has the option to be taxed at the rate of 15% of his gross income or at the regular income tax rate.

Since the employer knows that the annual gross compensation of the employee is above the compensation threshold of PhP975,000.00 at the start of the year, then the employer may, at the option of the employee, withhold income tax at the rate of 15% of gross income. It is immaterial that he may receive a bonus of an indeterminate amount because his regular compensation income already places him above the compensation threshold of PhP975,000.00. Thus, the employer should, in addition to the other reportorial requirements stated in Section 7 hereof, accomplish the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) and the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF).

EXAMPLE 2: At the start of the year, Mr. A, a Filipino employed by an ROHQ, receives a monthly salary and cost of living allowance in the amount of PhP65,000.00 and PhP5,000.00 respectively. His employment contract also states that he may receive a performance bonus at the end of the year which amount is not presently determinable. Since Mr. A's regular compensation income of PhP905,000.00 composed of PhP780,000.00 (PhP65,000.00 x 12 months) basic pay, PhP65,000.00 13th month pay and PhP60,000.00 (PhP5,000.00 x 12 months) cost of living allowance, is below the compensation threshold of PhP975,000.00 then his employer shall, on every pay period from the start of the year withhold from Mr. A income tax at the regular rate of withholding tax on compensation. However, if at the end of the year Mr. A receives a performance incentive bonus of PhP100,000.00, thus making his annual gross compensation income total PhP1,005,000.00 and he opts to be taxed at the rate of 15% of his gross income, his employer shall make the necessary adjustments to the income tax rate.

More particularly:

- a. The employer shall refund to the employee the excess of the tax withheld at the regular rate of withholding tax on compensation over the tax required to be withheld at the rate of 15% of gross income;
- b. The adjustment for the excess tax withheld at the regular income tax rate shall be reflected in the Monthly Remittance Return of

Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of December;

- c. The tax required to be withheld at the rate of 15% of gross income shall be reported in the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of December; and
- d. The adjustments will also be summarized in the Annual Information Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) and Final Withholding Taxes (BIR Form No. 1604-CF).

The above requirement shall be in addition to the other reportorial requirements stated in Section 7 herein.

The resulting aggregate excess remittance by the ROHQ/RHQ of withholding compensation (WC) shall be credited and applied in the succeeding month/s withholding tax remittances (WC) only until fully applied and utilized.

EXAMPLE 3: Mr. A, a Filipino employed by a regional area headquarters in the Philippines begins his employment on June 1. His employment contract stipulates that he shall receive an annual compensation of PhP975,000.00 inclusive of 13th month pay. At the end of the year, he would have received only PhP568,750.00, composed of PhP525,000.00 ($\text{PhP}975,000.00/13 \times 7$ months) basic pay and PhP43,750.00 ($\text{PhP}975,000.00/13 \times 7/12$ months) 13th month pay. However, since his employment contract states that he shall receive an annual compensation of PhP975,000.00, whether he actually receives this or not, then his employer shall, at the option of Mr. A, withhold income tax at the rate of 15% of actual gross compensation received.

EXAMPLE 4: Mr. A, a Filipino employed by a regional area headquarters in the Philippines begins his employment at the start of the year. His contract stipulates that he shall receive an annual compensation of PhP988,000.00, inclusive of 13th month pay. Since this amount is above the compensation threshold his employer shall, at the option of Mr. A, withhold income tax at the rate of 15% of gross income. However, at the end of June, Mr. A leaves his job for employment with another ROHQ. At this time, Mr. A would have received total compensation of PhP494,000.00 composed of PhP456,000.00 ($988,000.00/13 \times 6$ months) basic pay and PhP38,000.00 ($988,000.00/13 \times 6/12$ months) 13th month pay.

Mr. A has the option to be taxed at 15% of gross income for his employment under his first employment because Mr. A was due to

receive, under a contract of employment, an amount in excess of the compensation threshold of PhP975,000.

If under his second employment with another ROHQ within the same year, Mr. A's annual compensation is below the threshold, then the regular income tax rates will apply to his compensation under his second employment.

There is no need for the second employer to consolidate Mr. A's income from his previous employer (where Mr. A qualified for the tax rate of 15% of gross income) which was under a different tax regime.

EXAMPLE 5: Mr. A, a Filipino employed by a regional area headquarters in the Philippines begins his employment at the start of the year. His contract stipulates that he shall receive an annual compensation of PhP988,000.00. Since this amount is above the compensation threshold criteria, his employer shall, at the option of Mr. A, withhold income tax at the rate of 15% of gross income. However, at the end of June, for one reason or another (**e.g. reduction of compensation due to business reverses**), Mr. A's compensation is reduced such that his annual compensation will be reduced to an amount that is less than the compensation threshold.

In this case, while the final withholding tax rate was applied to Mr. A during the year, an adjustment should be made at the end of the year subjecting the entire annual compensation of Mr. A to the regular income tax rates. The employer should make the necessary adjustments at the end of the year in the following forms:

1. BIR Form No. 1601-C for the correct taxes to be withheld at the regular income tax rates; and
2. BIR Form No. 1601-F for excess taxes withheld and for over-remittance;
3. Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF).

The resulting excess remittance of fifteen percent (15%) final withholding tax, if any shall be credited and applied in the succeeding month/s fifteen percent (15%) final withholding tax only under ATC Code WI 320 and not against any other form of final tax remittances. Crediting shall be allowed only against the same type of final tax (ATC Code WI 320) until fully applied and utilized.

EXAMPLE 6: Mr. A, Filipino employed by a ROHQ is a manager of the company for a long time now. His contract stipulates that he shall receive an

annual compensation of PhP888,000.00. During the year, he received an increase in his salary which brings him now to more than the annual compensation threshold of PhP975,000. Because of the salary increase, he is now qualified to exercise the option to be taxed at the rate of 15% of his gross income. If Mr. A opts to be subject to the 15% preferential rate, he shall be covered by said 15% rate from the effectivity of his salary increase. However, his previous compensation (prior to the salary increase) shall remain to be subjected to the regular income tax rate. The same rules apply in instances of promotions made during the year where a promotion or change in job assignment qualifies the Filipino manager or technical employee to exercise the option to be taxed at 15% preferential rate.

EXAMPLE 7: Mr. A is an employee of ROHQ 1 at the start of the year. His annual gross compensation meets the compensation threshold at the beginning of the year. During the year, Mr. A is employed by ROHQ 2. His new contract provides for a gross annual compensation that meets the compensation threshold.

In this case, Mr. A is subject to the final withholding tax rate of 15% of gross income for both the ROHQ 1 and ROHQ 2. However, there is no need to annualize Mr. A's income from either ROHQ 1 or 2 because the annualized withholding tax method does not apply to the final withholding tax regime. Mr. A will not be required to file an annual ITR consolidating his income for the year under both employment which is subject to final withholding tax.

EXAMPLE 8: Mr. A is an employee of ROHQ 1 at the start of the year. His annual gross compensation is below the compensation threshold at the beginning of the year. During the year, Mr. A is employed by ROHQ 2. His new contract provides for a gross annual compensation that meets the compensation threshold.

For ROHQ 1, the applicable tax rate would be the regular tax on compensation income. For ROHQ 2, at the option of Mr. A, the applicable tax rate would be the final withholding tax rate of 15% of gross income. There is no need for ROHQ 2 to consolidate Mr. A's income from his previous employer (ROHQ 1) since this was covered under a different tax regime. However, if Mr. A, did not opt to be taxed using the 15% preferential rate, he will be subjected to regular income tax rate on compensation in which case there is a need to consolidated compensation earnings from ROHQ1 and ROHQ2 for a proper year-end adjustments on compensation.

EXAMPLE 9: Mr. A is an employee of ROHQ 1 at the start of the year. His annual gross compensation meets the compensation threshold at the beginning

of the year. During the year, Mr. A is employed by ROHQ 2. His new contract provides for a gross annual compensation that is below the compensation threshold.

For purposes of ROHQ 1, at the option of Mr. A, the applicable tax rate would be the final tax of 15% of gross income.

For purposes of ROHQ 2, the applicable tax rate would be the regular income tax on compensation income. ROHQ 2 shall be required to annualize such regular income but there is no need for ROHQ 2 to consolidate Mr. A's income from ROHQ 1, since this was covered under a different tax regime.

EXAMPLE 10: At the start of the year, Mr. A is an employee of ROHQ 1. His annual gross compensation at ROHQ 1 did not meet the compensation threshold at the beginning of the year. During the year, Mr. A left ROHQ 1 and transferred to ROHQ 2. His new contract provides for a gross annual compensation that is likewise below the compensation threshold.

For purposes of ROHQ 1, the applicable tax rate would be the regular income tax rates.

For purposes of ROHQ 2, the applicable tax rate would still be the regular income tax on compensation income. However, ROHQ 2 shall be required to annualize such regular income for purposes of making a year-end adjustment for withholding on compensation. Even if the total compensation income of Mr. A, when annualized, would exceed the compensation threshold, Mr. A's income would still remain under the regular income tax regime and will not change to the 15% final income tax regime.

EXAMPLE 11: Mr. A is a long-serving employee of an ROHQ. He is an executive secretary to the General Manager for which he receives an annual compensation of PhP988,000.00.

Even if Mr. A's annual gross compensation is above the compensation threshold of PhP975,000.00, he does not qualify for the rate of 15% on gross income because he is neither exercising managerial nor technical functions.

EXAMPLE 12: Mr. A, a Filipino employed by a regional area headquarters in the Philippines receives a monthly salary and cost of living allowance in the amount of PhP65,000.00 and PhP5,000.00, respectively. His employment contract also states that he may receive a performance bonus at the end of the year the amount is not yet presently

determinable. Since Mr. A's regular compensation income of PhP905,000.00 composed of PhP780,000.00 (PhP65,000.00 x 12 months) basic pay, PhP65,000.00 13th month pay, and PhP60,000.00 (PhP5,000.00 x 12 months) cost of living allowance, is below the compensation threshold of PhP975,000.00, then his employer shall, on every pay period from the start of the year, withhold from Mr. A income tax at the regular rate of withholding tax on compensation.

During the year, Mr. A either retires, or is separated from work. He receives a retirement or separation pay of PhP100,000.00, thus making his annual gross compensation income for the year in the total amount of PhP1,005,000.00. Notwithstanding that Mr. A's annual gross compensation now exceeds the compensation threshold, Mr. A shall be subject to income tax at the regular rate of withholding tax on compensation, since retirement and/or separation pay, whether or not subject to tax, shall not be considered in determining whether an employee meets the compensation threshold.

SECTION 6. Imposition of Fringe Benefits Tax. - The determinant test whether a Filipino employee has the option to avail of the fifteen percent (15%) preferential rate as a manager or technical employee is independent of the criteria in the imposition of fringe benefits tax under Section 33 of the Tax Code, as implemented by Revenue Regulations No. 3-98, as amended.

Pursuant to Revenue Regulations No. 3-98, the term, "*RANK AND FILE EMPLOYEES*" means all employees who are holding neither managerial nor supervisory position. On the other hand, the Labor Code of the Philippines, as amended, defines "*MANAGERIAL EMPLOYEE*" as one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; while "*SUPERVISORY EMPLOYEES*" are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment.

Inasmuch as the option to be subject to fifteen percent (15%) preferential rate and the coverage of fringe benefits tax are independent of each other, there would be instances where a Filipino employee shall enjoy a fifteen percent (15%) preferential rate as a technical employee but may not be covered by the fringe benefits tax not being a supervisory employee.

SCENARIO 1: Mr. A is a General Manager of an ROHQ. He is expected to receive an annual compensation of PhP988,000.00. He will likewise receive PhP200,000 fringe benefits for the year.

Mr. A's annual gross compensation is above the compensation threshold of PhP975,000.00, he opted for the fifteen percent (15%) final preferential rate.

As he opted for the fifteen percent (15%) final preferential tax rate, his fringe benefits shall likewise be subjected to the fifteen percent (15%) tax rate which shall be imposed on the grossed-up monetary value of the fringe benefit. The said tax base shall be computed by dividing the monetary value of the fringe benefit by eighty-five percent (85%).

SCENARIO 2: Mr. B, is a General Manager of an ROHQ, is expected to receive an annual compensation of PhP888,000.00. He will likewise receive PhP100,000 fringe benefits for the year.

Mr. B's annual gross compensation is below the compensation threshold of PhP975,000.00. The fringe benefits subject to fringe benefits tax are not included in determining gross compensation as defined under Section 4 of these regulations; thus, he does not qualify for the rate of fifteen percent (15%) final preferential income tax rate on gross income but the same will be subjected to regular income tax rate.

Moreover, being a manager, a fringe benefits tax of thirty two percent (32%) shall be imposed on the grossed-up monetary value of his fringe benefit. The said tax base shall be computed by dividing the monetary value of the fringe benefit by sixty eight percent (68%).

SCENARIO 3: Mr. C is a long-serving employee of an ROHQ. He is an executive secretary to the General Manager for which he is receiving an annual compensation of PhP988,000.00. He is likewise receiving PhP100,000 fringe benefits.

Even if Mr. C's annual gross compensation is above the compensation threshold of PhP975,000.00, he does not qualify for the rate of fifteen percent (15%) on gross income because he is neither exercising managerial nor technical functions. Thus, he is subject to the regular income tax on both his compensation income and fringe benefits.

SCENARIO 4: Mr. D is a technical employee for which he receives an annual compensation of PhP988,000.00. He likewise receives PhP100,000 fringe benefits for the year.

Mr. D's annual gross compensation is above the compensation threshold of PhP975,000.00, hence he is qualified for the rate of fifteen percent (15%) on gross income.

However, he is not subject to fringe benefits tax as he is neither exercising managerial or supervisory function, thus he is subject to the fifteen percent (15%) preferential income tax rate on both his compensation and fringe benefits.

SECTION 7. Reporting Requirements. – For a Filipino managerial or technical employee to have the option to be taxed at fifteen percent (15%) of his or her gross income, it shall no longer be necessary for the RHQ or ROHQ to file a request for ruling with the BIR National Office. Instead, the RHQ or ROHQ must file the following documents with the Revenue District Office having jurisdiction over it or, for ROHQs or RHQs that are considered large taxpayers, with the LT Assistance Division/LT Regulatory Division/LTDOs:

- a. Declaration of Employees' Availment of the 15% Preferential Tax Rate of every qualified employee (**BIR Form No. 1947 herein attached as Annex "A"**)

Declaration of Employees' Availment of the 15% Preferential Tax Rate shall be filed within 15 days from the date of effectivity of this Revenue Regulations, for employees currently employed with ROHQ or RHQ or within 15 days from the date of employment for those who will just be employed. Thereafter, the filing shall only be made whenever there are changes in the employment status of the employee (i.e. change of employer, change in salary package, promotion) in which case the newly accomplished BIR Form must be submitted not later than January 31st of the succeeding year.

- b. Employer's sworn declaration, stating under oath:
 - i. the names of its employees who received, or are due to receive, under an employment contract, a gross annual compensation equivalent to or more than PhP 975,000.00 or its adjusted amount;
 - ii. the inclusive dates for the relevant calendar year when the employee received, or are due to receive, gross annual compensation equivalent to or more than PhP 975,000.00 or its adjusted amount;
 - iii. that the employees received compensation solely from the ROHQs or RHQs and not from the company of which it is a branch, or from any other entity which may be an affiliate or subsidiary of the said company; and
 - iv. that such employees exercise managerial or technical functions.
- c. Employee's sworn declaration, stating under oath:

- i. his complete name, Taxpayer Identification Number (TIN);
- ii. job title and brief job description and responsibility;
- iii. the equivalent amount of gross annual compensation which he received or is due to receive must be at least PhP 975,000.00 or its adjusted amount;
- iv. the inclusive dates of the calendar year when he received or is due to receive gross annual compensation of at least PhP975,000.00 or its adjusted amount;
- v. that he is exclusively employed by the ROHQ or RHQ;
- vi. that he does not have any other employer other than the ROHQ or RHQ;
- vii. that he does not receive compensation from sources other than the ROHQ or RHQ where he is employed; and
- viii. that he exercises managerial or technical functions.

The declarations mentioned in subsections b & c above must be submitted not later than January 31st of the succeeding year.

- d. Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) and Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF) shall be filed within the applicable time periods and in the manner set forth in Sections 2.58(A)(1)&(2) and 2.83.2 of RR No. 2-98, as amended. The employer's Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF) shall have an additional schedule to reflect declaration of information pertaining to employees covered by the fifteen percent (15%) preferential tax regime. The revised format of BIR Form 1604-CF shall be covered by a separate Revenue Memorandum Order (RMO).

In case of failure to file any of the requirement stated under this Section or the filing of false information, the regular income tax shall be imposed on the employee.

SECTION 8. Penalty Clause. – Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

Moreover, any and all applicable criminal offense (e.g. tax evasion) under the National Internal Revenue Code, as amended, shall be charged against any person who is discovered to have committed any false declaration or misrepresentation.

SECTION 9. Transitory Provisions. – In as much as this regulations was issued later in the year, the following transitory provisions shall apply:

a. *Coverage:*

The transitory provision shall cover compensation payments made **from January 1, 2010**.

b. *Deadline for Adjustments:*

All affected taxpayers are allowed to make necessary adjustments in their withholding tax remittances (withholding tax on compensation or fifteen percent (15%) final withholding tax on compensation) without penalties, but **in no case beyond January 31, 2011**. However, compliance to existing rules and regulations on the availment of abatement of penalties should be complied by the ROHQ/RHQ.

c. *Manner of declaring adjustments:*

To properly segregate and isolate adjustments to be made on withholding tax on compensation or fifteen percent (15%) final withholding tax, all taxpayers affected are required to **file an amended BIR Form 1601C and/or BIR Form 1601F** to cover adjustments necessary as a result of these regulations.

d. *Rules / Guidelines in changes in classification of employee:*

1. For employees qualified and opted to avail the fifteen percent (15%) preferential rate under these regulations but was covered by regular withholding tax on compensation:

The employer is required:

- a. To re-compute the appropriate fifteen percent (15%) final tax on compensation paid from January 1, 2010.
 - b. File amended **BIR Forms 1601-F** to reflect the monthly adjustments covering the fifteen percent (15%) final tax on compensation paid to qualified/availing Filipino individuals from January 1, 2010 and every month thereafter. Please note that the appropriate ATC Code to be used in BIR Form 1601-F should be **WI 320** for payments to qualified Filipinos or aliens employed in an RHQ or ROHQ.
 - c. File amended **BIR Forms 1601-C** to correct the monthly declarations for withholding tax on compensation from January 1, 2010 and every month thereafter.
 - d. Refund to the employee concerned any differential withholding tax made (regular withholding compensation for the regular income tax vis-a-vis fifteen percent (15%) final tax on compensation).
 - e. The resulting aggregate excess remittance by the ROHQ/RHQ of withholding compensation (WC) shall be credited and applied in the succeeding month/s withholding tax remittances (WC) until fully utilized.
2. For employees not qualified to avail the fifteen percent (15%) preferential rate but was still subjected thereto instead of the regular withholding tax on compensation:

The employer is required:

- a. To re-compute for appropriate withholding tax on compensation on salary payments made from January 1, 2010.
 - b. File amended **BIR Forms 1601-C** to correct the monthly declarations for withholding tax on compensation from January 1, 2010 and monthly thereafter.
 - c. File amended **BIR Forms 1601-F** to reflect the monthly adjustments covering the fifteen percent (15%) final tax on compensation paid to qualified/availing Filipino individuals from January 1, 2010 and monthly thereafter. Please note that the appropriate ATC Code to be used in BIR Form 1601-F should be **WI 320** for payments to qualified Filipinos or aliens employed in RHQ or ROHQ.
 - d. The resulting excess remittance of fifteen percent (15%) final withholding tax shall be credited and applied in the succeeding month/s fifteen percent (15%) final withholding tax only under ATC Code WI 320 and not against any other form of final tax remittances. Crediting shall be allowed only against the same type of final tax (ATC Code WI 320), i.e. only for transactions covered by the transitory provisions of these regulations and only until fully applied and utilized.
3. For employees who are no longer in the employ of the ROHQ or RHQ, i.e. all those managerial or technical employees no longer working with the current ROHQ or RHQ at the time of approval of these regulations, their original withholding tax classification (regular or fifteen percent (15%) final tax as the case maybe, made by the ROHQ or RHQ's payroll master) shall be deemed correct and shall no longer be re-evaluated or reclassified in accordance with these regulations.
 4. The employer must file a **Sworn** listing of compensation payment subjected to adjustment as a result of these regulations following the herein listing format:

Schedule 1: **Employees Previously covered by WC now covered by WF**

Name of Employee	Original Declaration			Adjustment
	Period Covered (original declaration)	Amount of Compensation originally subjected to withholding on compensation	Original Regular Withholding Tax on Compensation actually remitted	Adjusted 15% FT on Compensation

Schedule 2: **Employees Previously covered by WF now covered by WC**

Name of Employee	Original Declaration			Adjustment
	Period Covered (original declaration)	Amount of Compensation originally subjected to 15% FT withholding on	Original 15% FT Withholding Tax on Compensation actually	Adjusted Regular Withholding on Compensation

		compensation	remitted	

Schedule 3: ***Employees no longer working with the ROHQ or RHQ and not reclassified or re-evaluated***

Name of Employee	Original Declaration		
	Period Covered (original declaration)	Amount of Compensation originally subjected to 15% FT withholding on compensation	Amount of Compensation originally subjected to regular withholding on compensation

SECTION 10. Repealing Clause. – All Orders, memoranda and other revenue issuances inconsistent with these regulations are hereby revoked, modified or amended accordingly.

SECTION 11. Effectivity. - These Revenue Regulations shall take effect immediately.

(Original Signed)
CESAR V. PURISIMA
 Secretary of Finance

Recommending Approval:

(Original Signed)
KIM S. JACINTO-HENARES
 Commissioner of Internal Revenue