

**[BIR REVENUE REGULATIONS NO. 11-2010,
October 26, 2010]**

**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**

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:

$$\begin{array}{ccccccc} \text{Adjusted} & & & & \text{Previous} & & \text{CPI for the current year} \\ \text{threshold} & & & & \text{threshold} & & \\ \text{amount} & = & & \times & \text{amount} & & \text{-----} \\ & & & & & & \text{CPI for the previous} \\ & & & & & & \text{reevaluation year} \end{array}$$

(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 subjected to the fifteen percent (15%) final withholding tax rate is different from the withholding tax on compensation imposable 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 employees compensation. The annualized withholding method as provided under Section 2.79(B) (5)(b) of RR No. 2-98, as amended, will only apply the case of employees, having more than one employer in a calendar year, whose income is subject 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%) is 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 ($\text{PhP975,000.00}/13 \times 7$ months) basic pay and PhP43,750.00 ($\text{PhP975,000.00}/13 \times 7/12$ 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