

[BIR REVENUE MEMORANDUM CIRCULAR NO. 63-2009, November 12, 2009]

PRIMER ON CREDITABLE WITHHOLDING TAX ON CAMPAIGN EXPENDITURES PRESCRIBED IN REVENUE REGULATIONS NO. 8-2009

Revenue Regulations 8-2009 (RR 8-2009) was issued last October 22, 2009 and published in the Philippine Star on October 27, 2009. These regulations provide for the withholding of a 5% creditable withholding tax (CWT) by candidates of local and national elections, their political parties and their contributors on their payments to their suppliers of campaign-related goods and services

This Circular provides the answers to questions in the implementation of RR 8-2009.

Question (Q) -1: What are the payments that are subject to the 5% CWT?

Answer (A) -1: The following are the payments subject to the 5% CWT:

- a. Payments made by political parties and candidates of local and national elections for their campaign expenditures; and
- b. Payments made by individuals or juridical persons for their purchases of goods and services intended to be given as campaign contributions to political parties and candidates.

Q-2: Is the 5% CWT a tax on the candidate, political party or contributor?

A-2: No. The 5% CWT is NOT a tax on the candidate, political party or contributor.

Q-3: What then is the 5% CWT?

A-3: This is a tax on the supplier of goods and services pertaining to campaign expenditures. This is a tax on the income of these suppliers of goods and services who shall be earning income when they provide the materials and services for the campaign requirements of the candidates, political parties and contributors. This tax is collected by means of the expanded withholding tax system where the candidates, political parties and contributors when making the payments for the supply of the goods and services are required to deduct a certain amount of the agreed transaction price and remit the same to the BIR.

Q-4: Is the 5% CWT collected by means of the expanded withholding tax system allowed under the law?

Q-4: Yes, this is allowed under the law, Section 57 (B) of the National Internal Revenue Code of 1997 (R.A. No. 8424), as amended, provides for withholding of creditable tax at source. To implement this provision of law, the Department of Finance and the Bureau of Internal Revenue regularly issues revenue regulations (RR) providing for what transactions or payments shall be covered by the CWT and the CWT rate. It is on this basis that RR 8-2009 have been issued and implemented.

Q-5: Is the expanded withholding tax system a new measure?

A-5 No. The expanded withholding tax system has been implemented by the BIR for over thirty years already. This system allows for the inclusion of transactions or payments that can be covered. It is on this basis that the payments for the campaign expenditures are now being subjected to the 5% CWT.

Q-6: Who are required to deduct and withhold the 5% CWT?

A-6: a. Candidates in the local and national elections;
b. Political parties;
c. Individuals and juridical persons on their income payments made to purchases of goods and services intended as campaign contributions.

Q-7: If a candidate, political party or contributor purchases goods or services amounting to an agreed price of P100,000 for a campaign-related expense, will they pay the supplier of goods or services P100,000 and pay the BIR an additional 5% or P5,000 for the 5% CWT?

A-7: No. The candidate, political party or contributor will pay only 95% of P100,000 or P95,000.00 to their supplier of goods or services and remit to the BIR the 5% of P100,000 or P5,000.00 representing the 5% CWT.

There is no additional amount that the candidate, political party or contributor shall pay to their supplier of goods and services. Thus, there is no reason that the prices for campaign expenditures shall increase because of the 5% CWT.

Q-8: Can the supplier of goods and services benefit from the P5,000 CWT remitted to the BIR?

A-8: Yes. The 5% CWT remitted to the BIR shall be allowed as a tax credit or deduction against the total income tax liability of the supplier of goods or services. The supplier of goods or services is still required to report their total income for a particular year and compute the corresponding income taxes due thereon. The 5% CWT can then be deducted from the total income tax liability.

For example, the supplier of the goods or services referred to in Q-7 above is a corporation and earns a total of P100,000 of taxable income for 2010. When the corporation reports this taxable income to the BIR, it will compute a total annual income tax liability of P30,000 (30% corporate income tax rate multiplied by total taxable income of P100,000). The corporation can deduct the 5% CWT of P5,000 from the total annual income tax and pay only the net amount of P25,000 to the BIR.

Q-9: What will be the proof of the supplier that they are entitled to the tax credit on the 5% CWT?

A-9: The supplier should be given BIR Form 2307 by the candidate, political party and contributor deducting the 5% CWT from their payments.

Under existing regulations, every payor (candidate, political party and contributor) required to deduct and withhold the CWT shall furnish, in triplicate, each payee (supplier of goods and services), with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon the request of the payee, however, the payor must furnish such certificate simultaneously with the income payment.

Q-10: Prior to RR No. 8-2009, various CWT rates are required in the withholding of tax on the different types of payments. Will the same various rates apply to the same payments under RR No. 8-2009?

A-10: No. RR No. 8-2009 prescribes a one uniform rate of 5% that will be applied in the withholding of tax on campaign expenditures.

Q-11: Contributor Ms. May Pag-asa who believes in the ability of Mr. Juan Maglilingkod, a candidate in the May 2010 elections, donates or contributes P100,000 in cash to the latter. (a) Will this donation be subject to the Donor's Tax? (b) Will Ms. May Pag-Asa be required to withhold and remit the 5% CWT under RR No. 8-2009?

A-11: (a) No. The donation shall not be subject to the payment of any donor's tax pursuant to Section 13 of RA No. 7166 (Election Code) in relation to Section 99 (C) of the Tax Code.

(b) No. Such donation does not result in Ms. *May Pag-asa* making payments to the supplier of goods and services where the 5% CWT shall apply.

Q-12: In relation to Q-11, instead of donating the P100,000 to Mr. Juan Maglilingkod, Ms. May Pag-asa purchased tarpaulins, t-shirts and other election paraphernalia from Matapat Corporation which was later on donated to Mr. Juan Maglilingkod. (a) Will the income payment of P100,000.00 made by Ms. May Pag-asa to Matapat Corporation on her purchases of goods subject to the 5% CWT? (b) Will the donation made by Ms. May Pag-asa subject to Donor's Tax?

A-12: (a) Yes. In this example, it is contributor Ms. May Pag-asa who made the purchases and the payment made to Matapat Corporation shall be subject to the 5% CWT

Ms. May Pag-asa shall now pay Matapat Corporation P95,000 and the P5,000 withheld by her representing the 5% CWT shall be remitted to the BIR.

(b). No. The donation shall still not be subject to the payment of any donors tax