[BIR REVENUE MEMORANDUM CIRCULAR NO. 21-2008, February 29, 2008]

CLARIFICATION ON THE PERSONS LIABLE TO THE TAX IMPOSED UNDER SECTION 127 OF THE TAX CODE AND THE CREDITING OF TAX COLLECTION TO THE APPROPRIATE OFFICE OF THE BUREAU OF INTERNAL REVENUE

The tax on sale, barter, or exchange of shares of stock listed and traded through the Local Stock Exchange (LSE) or through Initial Public Offering (IPO) is provided under Section 127 of the Tax Code, where Section 127 (A) refers to the rate applicable to the sale of shares of stocks listed and traded through the local stock exchange, while Section 127 (B) pertains to the rate applicable on shares of stock sold or exchanged through IPO of closely- held corporations.

Under Section 127(A), it is the duty of the stock broker to file the tax return (BIR Form 2552) and pay the tax due after collecting the same from the seller, within five (5) banking days from the date of collection thereof. The tax collected shall be credited to the BIR Office which has jurisdiction over the stockbroker. On the other hand, for tax imposed under Section 127(B), the person liable, in the case of "primary offering" is the issuing corporation, while the seller is the one primarily liable, in the case of "secondary offering The Philippine Stock Exchange has defined primary and secondary offering as follows:

1. Primary offering - is the original sale made to the investing public by the applicant company of its own securities (i.e., primary shares); and

2. Secondary offering - is an offer for sale made to the investing public by the existing shareholders of their securities which are already issued (i.e., secondary shares)

In computing for the tax due imposed under Section 127(B) of the Tax Code, the proportion of the shares sold over the outstanding shares of stocks after the listing shall be computed to determine the applicable tax rate (e.g. 4%, 2% or 1%). The determined rate shall be multiplied by the Gross Selling Price (GSP) or Gross Value in Money (GVM). To illustrate below is a sample situation:

> "X Company, a closely- held corporation, has 1,000,000 authorized shares, where 500,000 of which are outstanding shares before it listed its authorized shares. During the IPO, 500,000 shares were sold as primary offering, while 200 000 shares were sold as secondary offering. The 500,000 shares sold and considered as primary offering fall under the 1 % bracket (500,000/1,000,000 = 50%); thus, the tax due shall be 1% multiplied by the GSP or GVM. The 200,000 shares sold and considered as secondary offering fall under the 4% bracket (200,000/1,000,000=20%); thus, the tax due shall be 4% multiplied by