

**[ BIR REVENUE MEMORANDUM CIRCULAR NO. 77-2008, November 24, 2008 ]**

**TAXABILITY OF DIRECTOR'S FEES RECEIVED BY DIRECTORS WHO ARE NOT EMPLOYEES OF THE CORPORATION FOR VAT OR PERCENTAGE TAX PURPOSES AS ESPOUSED UNDER REVENUE MEMORANDUM CIRCULAR NO. 34-2008**

Sometime in April 2008, the Bureau of Internal Revenue promulgated Revenue Memorandum Circular No. 34-2008. In the said revenue's issuance, the Bureau, aside from touching on the well-settled rule that director's fees are subject to income tax, has likewise espoused the view that the fees, including the per diems or allowances paid to a director who is not an employee of the corporation paying such fees, per diems, or allowances are not only subject to the income tax but are likewise subject to the imposition of the 12% VAT or to the 3% percentage tax.

*As stated in the said Revenue Memorandum Circular No. 34-2008, "[A]side from being liable to the payment of income tax imposed under Title II of the Code, these directors who are not employees, having received such fees which had been subsequently reported in their annual income tax returns as part of their gross income should likewise be liable to pay business tax on account of such receipt of income. They fall under the category of sellers of services under Title IV of the Code who are liable to pay the 12% VAT on their gross receipts pursuant to Section 108 thereof, or the 3% percentage tax imposed under Section 116, should they fail to meet the VAT threshold."*

In asserting further this view that such directors receiving such fees, per diems or allowances fall under the category of sellers of services pursuant to Section 108 of the Tax Code, the Bureau averred that since such fees, per diems or allowances received by these directors are not enumerated among those remunerations for services that are exempt from the imposition of the VAT under Section 109 of the Code, the same are, thus, effectively covered by said VAT imposition.

This recent position taken by the Bureau has apparently caused clamor from the various sectors of the business community to review and revisit the expositions taken by the Bureau in Revenue Memorandum Circular No. 34-2008.

In resolving the issue of whether or not directors sitting as members of Board of Directors for corporations of which they are not employees are considered as persons considered liable to VAT, it is essential to determine first whether the functions discharged by these individuals as directors of corporations fall within this purview of those transactions pursued "*in the course of trade or business*" which is defined in Sec. 105 of the Code, pertains to the "*regular conduct or pursuit of a commercial or economic activity*".

Section 105 of the Tax Code provides the persons who are liable to VAT under Title IV thereof, viz: