

[BIR REGULATIONS NO. 3-98, May 21, 1998]

IMPLEMENTING SECTION 33 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424 RELATIVE TO THE SPECIAL TREATMENT OF FRINGE BENEFITS

Pursuant to Section 244, in relation to Section 33 of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to govern the collection at source of the tax on fringe benefits which have been furnished, granted or paid by the employer beginning January 1, 1998.

SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS

(A) *Imposition of Fringe Benefits Tax* — A final withholding tax is hereby imposed on the grossed-up monetary value of fringe benefit furnished, granted or paid by the employer to the employee, except rank and file employees as defined in these Regulations, whether such employer is an individual, professional partnership or a corporation, regardless of whether the corporation is taxable or not, or the government and its instrumentalities except when: (1) the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer; or (2) when the fringe benefit is for the convenience or advantage of the employer. The fringe benefit tax shall be imposed at the following rates:

Effective January 1, 1998	-	34%
Effective January 1, 1999	-	33%
Effective January 1, 2000	-	32%

The tax imposed under Sec. 33 of the Code shall be treated as a final income tax on the employee which shall be withheld and paid by the employer on a calendar quarterly basis as provided under Sec. 57 (A) (Withholding of Final Tax on certain Incomes) and Sec. 58 A (Quarterly Returns and Payments of Taxes Withheld) of the Code.

The grossed-up monetary value of the fringe benefit shall be determined by dividing the monetary value of the fringe benefit by the following percentages and in accordance with the following schedule:

Effective January 1, 1998	-	66%
Effective January 1, 1999	-	67%
Effective January 1, 2000	-	68%

The grossed-up monetary value of the fringe benefit represents the whole amount of income realized by the employee which includes the net amount of money or net monetary value of property which has been received plus the amount of fringe benefit tax thereon otherwise due from the employee but paid by the employer for and in behalf of his employee, pursuant to the provisions of this Section.

Coverage — These Regulations shall cover only those fringe benefits given or furnished to managerial or supervisory employees and not to the rank and file.

The term, "RANK AND FILE EMPLOYEES" means all employees who are holding neither managerial nor supervisory position. 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. "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.

Moreover, these regulations do not cover those benefits properly forming part of compensation income subject to withholding tax on compensation in accordance with Revenue Regulations No. 2-98.

Fringe benefits which have been paid prior to January 1, 1998 shall not be covered by these Regulations.

Determination of the Amount Subject to the Fringe Benefit Tax — In general, the computation of the fringe benefits tax would entail (a) valuation of the benefit granted and (b) determination of the proportion or percentage of the benefit which is subject to the fringe benefit tax. That the Tax Code allows for the cases where only a portion (i.e. less than 100 per cent) of the fringe benefit is subject to the fringe benefit tax is clearly stated in Section 33 (a) of R.A. 8424 which stipulates that fringe benefits which are "required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer" are not subject to the fringe benefit tax. Thus, in cases where the fringe benefits entail joint benefits to the employer and employee, the portion which shall be subject to the fringe benefits tax and the guidelines for the valuation of fringe benefits are defined under these rules and regulations.

Unless otherwise provided in these regulations, the valuation of fringe benefits shall be as follows:

(1) If the fringe benefit is granted in money, or is directly paid for by the employer, then the value is the amount granted or paid for.

(2) If the fringe benefit is granted or furnished by the employer in property other than money and ownership is transferred to the employee, then the value of the fringe benefit shall be equal to the fair market value of the property as determined in accordance with Sec. 6 (E) of the Code (Authority of the Commissioner to Prescribe Real Property Values).

(3) If the fringe benefit is granted or furnished by the employer in property other than money but ownership is not transferred to the employee, the value of the fringe benefit is equal to the depreciation value of the property.

Taxation of fringe benefit received by a non-resident alien individual who is not engaged in trade or business in the Philippines — A fringe benefit tax of

twenty-five percent (25%) 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 seventy-five per cent (75%).

Taxation of fringe benefit received by (1) an alien individual employed by regional or area headquarters of a multinational company or by regional operating headquarters of a multinational company; (2) an alien individual employed by an offshore banking unit of a foreign bank established in the Philippines; (3) an alien individual employed by a foreign service contractor or by a foreign service subcontractor engaged in petroleum operations in the Philippines; and (4) any of their Filipino individual employees who are employed and occupying the same position as those occupied or held by the alien employees. — A fringe benefit tax of fifteen per cent (15%) 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 per cent (85%).

Taxation of fringe benefit received by employees in special economic zones — Fringe benefits received by employees in special economic zones, including Clark Special Economic Zone and Subic Special Economic and Free Trade Zone, are also covered by these regulations and subject to the normal rate of fringe benefit tax or the special rates of 25% or 15% as provided above.

(B) *Definition of Fringe Benefit* — In general, except as otherwise provided under these regulations, for purposes of this Section, the term "FRINGE BENEFIT" means any good, service, or other benefit furnished or granted by an employer in cash or in kind, in addition to basic salaries, to an individual employee (except rank and file employee as defined in these regulations) such as, but not limited to the following:

- (1) Housing;
- (2) Expense account;
- (3) Vehicle of any kind;
- (4) Household personnel, such as maid, driver and others;
- (5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
- (6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
- (7) Expenses for foreign travel;
- (8) Holiday and vacation expenses;
- (9) Educational assistance to the employee or his dependents; and
- (10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

For this purpose, the guidelines for valuation of specific types of fringe benefits and the determination of the monetary value of the fringe benefits are give below. The taxable value shall be the grossed-up monetary value of the fringe benefit.

1. **Housing privilege** —

(a) If the employer leases a residential property for the use of his employee and the said property is the usual place of residence of the employee, the value of the benefit shall be the amount of rental paid thereon by the employer, as evidenced by the lease contract. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit.

(b) If the employer owns a residential property and the same is assigned for the use of his employee as his usual place of residence, the annual value of the benefit shall be five per cent (5%) of the market value of the land and improvement, as declared in the Real Property Tax Declaration Form, or zonal value as determined by the Commissioner pursuant to Section 6(E) of the Code (Authority of the Commissioner to Prescribe Real Property Values), whichever is higher. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit.

The monetary value of the housing fringe benefit is equivalent to the following:

$$MV = [5\% (\text{FMV or ZONAL VALUE})] \times 50\%$$

WHERE:

MV = MONETARY VALUE

FMV = FAIR MARKET VALUE

(c) If the employer purchases a residential property on installment basis and allows his employee to use the same as his usual place of residence, the annual value of the benefit shall be five per cent (5%) of the acquisition cost, exclusive of interest. The monetary value of fringe benefit shall be fifty per cent (50%) of the value of the benefit.

(d) If the employer purchases a residential property and transfers ownership thereof in the name of the employee, the value of the benefit shall be the employer's acquisition cost or zonal value as determined by the Commissioner pursuant to Section 6(E) of the Code (Authority of the Commissioner to Prescribe Real Property Values), whichever is higher. The monetary value of the fringe benefit shall be the entire value of the benefit.

(e) If the employer purchases a residential property and transfers ownership thereof to his employee for the latter's residential use, at a price less than the employer's acquisition cost, the value of the benefit shall be the difference between the fair market value, as declared in the Real Property Tax Declaration Form, or zonal value as determined by the Commissioner pursuant to Sec. 6(E) of the Code (Authority of the Commissioner to Prescribe Real Property Values), whichever is higher, and the cost to the employee. The monetary value of the fringe benefit shall be the entire value of the benefit.

(f) Housing privilege of military officials of the Armed Forces of the Philippines (AFP)

consisting of officials of the Philippine Army, Philippine Navy and Philippine Air Force shall not be treated as taxable fringe benefit in accordance with the existing doctrine that the State shall provide its soldiers with necessary quarters which are within or accessible from the military camp so that they can be readily on call to meet the exigencies of their military service.

(g) A housing unit which is situated inside or adjacent to the premises of a business or factory shall not be considered as a taxable fringe benefit. A housing unit is considered adjacent to the premises of the business if it is located within the maximum of fifty (50) meters from the perimeter of the business premises.

(h) Temporary housing for an employee who stays in a housing unit for three (3) months or less shall not be considered a taxable fringe benefit.

2. Expense account —

(a) In general, expenses incurred by the employee but which are paid by his employer shall be treated as taxable fringe benefits, except when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the employee.

(b) Expenses paid for by the employee but reimbursed by his employer shall be treated as taxable benefits except only when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the said employee.

(c) Personal expenses of the employee (like purchases of groceries for the personal consumption of the employee and his family members) paid for or reimbursed by the employer to the employee shall be treated as taxable fringe benefits of the employee whether or not the same are duly receipted for in the name of the employer.

(d) Representation and transportation allowances which are fixed in amounts and are regular received by the employees as part of their monthly compensation income shall not be treated as taxable fringe benefits but the same shall be considered as taxable compensation income subject to the tax imposed under Sec. 24 of the Code.

3. Motor vehicle of any kind —

(a) If the employer purchases the motor vehicle in the name of the employee, the value of the benefit is the acquisition cost thereof. The monetary value of the fringe benefit shall be the entire value of the benefit, regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.

(b) If the employer provides the employee with cash for the purchase of a motor vehicle, the ownership of which is placed in the name of the employee, the value of the benefits shall be the amount of cash received by the employee. The monetary value of the fringe benefit shall be the entire value of the benefit regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer, unless the same was subjected to a