

**[ BIR REVENUE MEMORANDUM CIRCULAR NO. 42-99, June 02, 1999 ]**

**AMENDING REVENUE MEMORANDUM CIRCULAR NO. 32-99.**

Under the Exchange of Notes between the Japanese Government and the Republic of the Philippines for OECF Funded Projects undertaken in the Philippines, the following are the standard clauses pertaining to the tax treatment of participating Japanese contractors and nationals:

*"The government of the Republic of the Philippines will exempt the Fund from all fiscal levies or taxes imposed in the Republic of the Philippines on and/or in connection with the Project Loan, the Engineering Service Package Loan and the Commodity Loan as well as interest accruing therefrom."*

*"The Government of the Republic of the Philippines will, itself or through its executing agencies or instrumentalities, assume all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and: nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products and/or services to be provided under the Project Loan."*

The foregoing provisions of the Exchange of Notes mean that the Japanese contractors or nationals engaged in OECF-funded projects in the Philippines shall not be required to shoulder all fiscal levies or taxes associated with the project. Instead, the taxes shall be shouldered and borne by the executing government agencies. Hence, for the comprehensive treatment of the tax implications arising therefrom, the following rulings are hereby promulgated:

**A) VALUE-ADDED TAX:**

1. The invoice billings of the Japanese contractors with the executing government agencies are exempt from the 8.5% creditable VAT withholding prescribed under Section 114 (C) of the National Internal Revenue Code of 1997 (then section 110(c), old NIRC) as provided for in Revenue Memorandum Circular No. 32-99. Accordingly, the executing agencies of the Philippine government shall not withhold the 8.5% creditable VAT from the said billings of the Japanese contractors.

2. The suppliers and sub-contractors of the Japanese contractors shall bill and pass on the 10% VAT to the said Japanese contractors. The Japanese contractors, in turn, shall bill and pass on the 10% VAT to the concerned executing agencies of the Philippine government. Thus, billings to the executing government agencies shall be deemed inclusive of VAT. Since, under the Exchange of Notes, the OECF Fund shall not be used to pay for the tax, then the VAT is to be paid out of the Philippine counterpart fund.