

SyCipLaw Tax Bulletin:

Revenue Regulations No. 6-2018: Once Again, Payment of Withholding Tax at the Time of Audit Considered Compliant with Withholding Tax Requirements for Deductibility of Expenses

On January 19, 2018, Department of Finance (“**DOF**”) Secretary Carlos G. Dominguez issued RR No. 6-2018 which revoked RR No. 12-2013 and reinstated Section 2.58.5 of RR No. 2-1998, as amended by RR Nos. 14-2002 and 17-2003. Section 2.58.5 of RR No. 2-1998 implements the requirement of withholding of income tax for deductibility of expenses.¹ RR No. 6-2018 was published in the Manila Bulletin on January 23, 2018 and took effect on February 7, 2018.

Prior to its amendment by RR No. 12-2013, Section 2.58.5 of RR No. 2-1998², as amended by RR Nos. 14-2002 and 17-2003, allowed a taxpayer or withholding agent to deduct income payments against gross income despite failure to withhold income tax thereon at the time of the payment provided that the withholding agent or taxpayer pays the withholding tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of audit or investigation or reinvestigation or reconsideration.³

On July 12, 2013,⁴ then DOF Secretary Cesar V. Purisima issued RR No. 12-2013 and amended Section 2.58.8 to provide a stricter policy on withholding of taxes. RR No. 12-2013 provides that no deduction against gross income will be allowed in cases where no withholding of tax was made even if the taxpayer or withholding agent pays the withholding tax at the time of the audit investigation or reinvestigation or reconsideration.

With the issuance of RR No. 6-2018, the DOF relaxed the policy on withholding tax and reinstated the rule prior to RR No. 12-2013. Thus, taxpayers are, again, allowed to claim income payments against gross income despite failure to withhold taxes therefrom provided that they pay the withholding tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of audit or investigation or reinvestigation or reconsideration.

¹ The 1997 Tax Code provides the following in relation to withholding of income tax on income payments:

SECTION 34. Deductions from Gross Income.

(K) Additional Requirements for Deductibility of Certain Payments.

Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code.

Prior to the 1997 Tax Code, the 1977 Tax Code provided as follows:

SECTION 29. Deductions from gross income.

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(j) Additional requirement for deductibility of certain payments. — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this section, Sections 51 and 74 of this Code.

² Before being repealed by RR No. 2-1998, RR No. 6-1985, as amended by RR No. 8-1990, provided for the following rule on requirement for deductibility:

Sec. 9. (a) Requirement for deductibility. Any income payment, which is otherwise deductible under Sections 29 and 54 of the Tax Code, as amended, shall be allowed as a deduction from the payor's gross income only if it is shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue in accordance with Sections 50, 51, 72, and 74 also of the Tax Code.

(b) Requirement for registration of motor vehicle. In order to ensure the withholding and remittance of the creditable tax imposed in these regulations, no motor vehicle shall be registered by the Land Transportation Office without the Certificate Authorizing Registration (CAR), indicating the Payment Order/Confirmation Receipt or Official Receipt numbers, date of payment, and amount of creditable withholding tax, issued by the appropriate Revenue District Officer.

³ Before being amended by RR No. 12-2013, Section 2.58.5 of RR No. 2-1998, as amended by RR Nos. 14-2002 and 17-2003, reads:

Sec. 2.58.5. Requirements for Deductibility. - Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.

A deduction will also be allowed in the following cases where no withholding of tax was made:

(A) The payee reported the income and pays the tax due thereon and the withholding agent pays the tax including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of the audit/investigation or reinvestigation/reconsideration.

(B) The recipient/payee failed to report the income on the due date thereof, but the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of audit/investigation or reinvestigation/reconsideration.

(C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld including the interest, incident to such error, and surcharges, if applicable, at the time of the audit/investigation or reinvestigation/reconsideration.

Items of deduction representing return of capital such as those pertaining to purchases of raw materials forming part of finished product or purchases of goods for resale, shall be allowed as deductions upon withholding agent's payment of the basic withholding tax and penalties incident to non-withholding or underwithholding. [Emphasis supplied]

⁴ RR No. 12-2013 was published in the Manila Bulletin on July 13, 2013 and took effect on July 28, 2013.

About SyCip Salazar Hernandez & Gatmaitan

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