

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

July 23, 2009

REVENUE MEMORANDUM CIRCULAR NO. 41-2009

SUBJECT: Clarifying the Meaning of the Term “*Managerial and Technical Positions*” under Section 25(C) of the Tax Code of 1997, as Amended, and for Other Purposes.

TO: All Internal Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officials, employees and others concerned, please be informed that **BIR ruling No. DA-061-04** issued in favor of *Cypress Semiconductor Philippine Headquarters, Ltd. – Regional Operating Headquarters* which held that certain positions of Filipino personnel of multinational companies qualify as managerial and/or technical positions are entitled to the 15% preferential tax rate under Section 25 (C) of the Tax Code of 1997 is hereby revoked *in so far as it is inconsistent with the provisions of this Revenue Memorandum Circular*.

Section 2.57-1 (D) of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 12-2001, implementing Section 25 (C) of the Tax Code, as amended, provides as follows:

“(D) Income Derived by Alien Individuals employed by Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies. – A final withholding tax equivalent to fifteen percent (15%) shall be withheld by the withholding agent from the gross income received by every alien individual occupying managerial and technical positions in regional or area headquarters and regional operating headquarters and representative offices established in the Philippines by multinational companies as salaries, wages, annuities, compensation, remuneration, and other emoluments, such as honoraria and allowances, except income which is subject to the fringe benefits tax, from such regional or area headquarters and regional operating headquarters.

“The same tax treatment shall apply to Filipinos employed and occupying the same positions as those aliens employed by regional or area headquarters and regional operating headquarters of multinational companies, regardless of whether or not there is an alien executive occupying the same position. Provided, that such Filipinos shall have the option to be taxed at either 15% of gross income or at the regular tax rate on their taxable income in accordance with the Tax Code of 1997, if the employer (Regional Operating Headquarters/Regional or Area Headquarters) is governed by Book III of E.O. 226, as amended by R.A. 8756. In case the Filipino

opted to be taxed at the regular tax rate under Sec. 24 of the Tax Code of 1997, the provisions of Sec. 2.79(A) to (D) of Revenue Regulations No. 2-98 shall apply.

“The term “multinational company” means a foreign firm or entity engaged in international trade with its affiliates or subsidiaries or branch offices in the Asia-Pacific Region and other foreign markets.”

The ***alien individuals occupying managerial and technical positions*** referred to above are the so-called “***expatriate employees***”. For this purpose, **BIR Ruling No. DA 450-99** defined “***expatriate employees***” as follows:

“x x x Since what you would like to put up in the Philippines is a Regional Operating Headquarters, its expatriate employees are subject to tax at the rate of 15% on their gross compensation income. The term “expatriate employees”, however, is classified to refer only to aliens employed in managerial, confidential or highly technical positions. Thus, under Philippine Labor Law, the employment of non-resident aliens is limited only to positions which are managerial or HIGHLY technical in nature or where there are no Filipinos who are competent, able and willing to perform the services for which the aliens are desired. (Emphasis supplied.)

In *Philippine Appliance Corporation vs. Laguesma, 226 SCRA 730 (1993)*, the Supreme Court held that a “*managerial employee*” is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. The **test of “managerial status”** depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. Where such recommendatory powers are subject to evaluation, review and final action by the department heads and other higher executives of the company, the person having such recommendatory powers is not a managerial employee. The fact that his work description is either manager or supervisor is of no moment considering that it is the nature of his functions and not the said nomenclature of title which determines his status.

To be a managerial employee, the following elements must concur: (1) his primary duty consists of performance of work directly related to management policies; (2) he customarily and regularly exercises discretion and independent judgment in the performance of his functions; (3) he regularly and directly assists in the management of the establishment; and (4) he does not devote 20% of his time to work other than those above prescribed. The test is whether the position requires use of independent judgment. The employees are not managerial employees if they only execute approved and established policies, leaving little or no discretion at all whether to implement said policies or not. ***Villuga vs NLRC, 225 SCRA 537 (1993)***.

On the other hand, the term “***technical position***” is ***limited only*** to positions which are ***highly technical in nature*** or where there are ***no Filipinos who are competent, able and willing to perform the services for which the aliens are desired***.

In view thereof, only Filipinos employed and occupying ***managerial and highly technical positions*** as defined above similar to the positions of the aliens employed by regional or area headquarters and regional operating headquarters of multinational companies shall be entitled to the option to be taxed at either 15% of gross income or at the regular income tax rate on their taxable income in accordance with Section 25 (C) of the Tax Code of 1997, as amended,

if the employer, i.e., Regional Operating Headquarters/Regional or Area Headquarters, is governed by Book III of E.O. 226, as amended by R.A. 8756.

All other BIR rulings issued inconsistent herewith are likewise revoked accordingly.

All concerned revenue officials are hereby enjoined to be guided accordingly and to give this Circular as wide a publicity as possible.

(Original Signed)
SIXTO S. ESQUIVIAS IV
Commissioner of Internal Revenue