

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

September 5, 2008

REVENUE MEMORANDUM CIRCULAR NO. 65-2008

SUBJECT : Clarifying the Business Taxation on the Activities Undertaken by the Bangko Sentral Ng Pilipinas (BSP) In Pursuance Of Its Mandates as the Independent Central Monetary Authority of the Republic of the Philippines.

TO : All Internal Revenue Officers and Others Concerned

BACKGROUND

This Revenue Memorandum Circular is issued to clarify the taxation of the Bangko Sentral ng Pilipinas (“BSP”) with respect to activities it undertakes in pursuance of its constitutional and statutory mandates as the country’s independent central monetary authority. It has been determined that these activities which BSP engages in, including transactions it undertakes, are geared towards the attainment of these mandates.

This Circular also aims to identify such activities and transactions undertaken by the BSP, which are not incompatible with its defined mandates, thereby rationalizing the imposition of applicable taxes on those activities. The functions that BSP exercises in pursuance of its mandates as independent central monetary authority are vital in the determination of the taxability of the transactions or activities on which it is engaged in.

In fine, both constitutional and statutory provisions outlining BSP’s primary objective and responsibilities have been thoroughly considered in determining the status of BSP and the taxability of its activities and transactions. There is no issue that BSP was created both as regulatory agency and chartered institution¹. Accordingly, its activities and transactions are defined within the context of BSP’s chartered activities as the independent central monetary authority and regulatory body.

SECTION 1. The Bangko Sentral ng Pilipinas: Its Responsibility and Primary Objective as the Independent Central Monetary Authority.

Article XII, Section 20 of the 1987 Constitution has mandated Congress to establish an independent central monetary authority that shall be responsible in providing policy directions in the areas of money, banking, and credit. The authority shall also exercise supervision over the operations of banks and exercise such regulatory powers as

¹ Sec. 2, E.O. 292 (Administrative Code of 1987) defines the following terms, to wit –

“(11) *“Regulatory agency”* refers to any agency expressly vested with jurisdiction to regulate, administer or adjudicate matters affecting substantial rights and interests of private persons, the principal powers of which are exercised by a collective body, such as a commission, board or council.

(12) *“Chartered institution”* refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State.”

may be provided by law over the operations of finance companies and other institutions performing similar functions.

Republic Act (“R.A.”) No. 7653 (the “BSP Charter”) was enacted reiterating these constitutional policy and objective, as well as defining the core functions of the BSP. As the central monetary authority, BSP shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. As such, it shall provide policy direction in these areas. As a regulatory body, BSP shall exercise supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.²

SECTION 2. BSP is Not a Bank nor a Non-Bank-Financial Intermediary Performing Quasi- Banking Functions. BSP is a Government Instrumentality Organized as a Chartered Institution.

Consistent with its constitutional and statutory mandates, it is evident that the BSP is not a bank. As defined under Section 3 of R.A. No. 8791 or the General Banking Law of 2000, in relation to Section 22 (v) of the Tax Code, “banks” shall refer to those entities engaged in the lending of funds obtained from the public in the form of deposits, and are classified into universal banks, commercial banks, thrift banks (savings and mortgage banks, stock savings and loan associations, and private development banks), cooperative banks, rural banks, Islamic banks and other classifications of banks as may be determined by the Monetary Board of the BSP.

BSP cannot likewise be considered as a non-bank financial intermediary performing quasi-banking functions. “Non-bank financial intermediaries” shall refer to persons or entities whose principal function include lending, investing or placement of funds or evidence of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. The term also includes all entities regularly engaged in lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.

Anent the term “non-bank financial intermediaries”, the term “quasi-banking functions” means the borrowing of funds from twenty (20) or more persons or corporate lenders at any one time, through the issuance, endorsement or acceptance of debt instruments of any kind, other than deposits, for the borrower’s own account or through the issuance of certificates of assignment or similar instruments with recourse, or of repurchase agreements, for purposes of relending or purchasing receivables or other similar obligations: *provided*, however, that commercial, industrial and other non-financial companies, which borrow funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions. In the same manner, the term “deposit substitutes” shall refer to an alternative form of obtaining funds from the public (i.e., twenty [20] or more individual or corporate lenders at any one time), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower’s own account, for the purpose of relending or purchasing receivables and other obligations, or financing their own needs or the needs of their agent or dealer.

² Section 1 (Declaration of Policy) and Section 3 (Responsibility and Primary Objective of BSP), R.A. No. 7653.

“Banking activities” refer to the functions or operations conducted to carry on the business of commercial banking, such as accepting drafts and issuing letters of credit; discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; accepting or creating demand deposits; receiving other types of deposits and deposit substitutes; buying and selling foreign exchange and gold or silver bullion; acquiring marketable bonds and other debt securities; and extending credit, subject to such rules as the Monetary Board of the BSP may promulgate. Thus, for an activity to be considered as a banking activity, it should comply with the rules promulgated by the Monetary Board of the BSP.

It is clear, therefore, that the BSP is not a bank nor a quasi-bank; neither is it deemed engaged in banking activities since the operations it undertakes are geared towards the attainment of its constitutional and statutory mandates, and not in pursuit of commercial or business activities. However, as a chartered institution or body corporate, it is also permitted to engage in proprietary activities not incompatible with its defined mandates as a government instrumentality. These proprietary activities of the BSP are necessary to sustain its existence as a body corporate enjoying fiscal and administrative autonomy.

SECTION 3. Taxation Status of the BSP: Legal Bases that Authorized the Imposition of Taxes on BSP Activities and Transactions.

The constitutional provision authorizing the creation of BSP does not provide any rule of taxation. The law creating it, R.A. No. 7653, has provided for its limited tax exemption, to wit:

“SECTION 125. Tax Exemptions. — The Bangko Sentral shall be exempt for a period of five (5) years from the approval of this Act from all national, provincial, municipal and city taxes, fees, charges and assessments.

The exemption authorized in the preceding paragraph of this section shall apply to all property of the Bangko Sentral, to the resources, receipts, expenditures, profits and income of the Bangko Sentral, as well as to all contracts, deeds, documents and transactions related to the conduct of the business of the Bangko Sentral: Provided, however, That said exemptions shall apply only to such taxes, fees, charges and assessments for which the Bangko Sentral itself would otherwise be liable, and shall not apply to taxes, fees, charges, or assessments payable by persons or other entities doing business with the Bangko Sentral: Provided, further, That foreign loans and other obligations of the Bangko Sentral shall be exempt, both as to principal and interest, from any and all taxes if the payment of such taxes has been assumed by the Bangko Sentral.”

The plain and manifest intention of the law is to impose taxes on BSP after the expiration of its tax exemption, which is five (5) years from the approval of the Act creating it, i.e., on July 3, 1993. The imposition of taxes upon it, however, is neither absolute nor unlimited, but subject to the inherent and constitutional limitations on the power to tax. One of the inherent limitations of the power to tax is the exemption of government from taxes.³ Nonetheless, only revenues, receipts or transactions of the

³ It is axiomatic that when public property [or the Government itself] is involved, exemption is the rule and taxation is the exception (Social Security System vs. City of Bacolod, 115 SCRA 412; National Waterworks and Sewerage Authority vs. Quezon City, 23 SCRA 286; Board of Assessment Appeals vs.

government resulting from the exercise of governmental functions will be exempt from taxes. Hence, if the government engages in proprietary functions, it exposes itself to the imposition of taxes as if the same is undertaken by an ordinary taxpayer.

The imposition of business taxes on the BSP shall take into account the foregoing basic principles. Accordingly, BSP shall be exempt from business taxes for its revenues and receipts derived from the exercise of essential governmental functions but subject to business taxes in the exercise of purely proprietary functions.

However, the performance by the BSP of proprietary functions will still not warrant the imposition of GRT under Sections 121 and 122 of the Tax Code because it is not one of those taxpayers stated under the same Code to be liable for said taxes. But, if in the performance of its proprietary functions, BSP engages in any of the transactions enumerated under Section 105 of the Tax Code, then it becomes liable to value added tax (VAT) imposed under Sections 106 to 108 of the same Code.

This Circular shall be given as wide a publicity as possible.

(Original Signed)
LILIAN B. HEFTI
Commissioner of Internal Revenue

Court of Appeals, 8 SCRA 225). This implied exemption is generally reinforced by express provisions in the constitution or statutes exempting the Government. (Cooley. Ibid.)