

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Date: October 6, 2011

REVENUE MEMORANDUM CIRCULAR NO. 48-2011

Subject: Circularization of the relevant excerpts from the *En Banc* Supreme Court Decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689 dated July 19, 2011, on the imposition of Documentary Stamp Tax on inter-office memo covering advances granted by an affiliated corporation.

To: All Internal Revenue Officials and Employees Concerned

For the information and guidance of all internal revenue officials and employees concerned, quoted hereunder is the relevant portion of the *En Banc* Supreme Court Decision in the case *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689 dated July 19, 2011, concerning Documentary Stamp Tax on Inter-corporate Loans:

“xxx xxx xxx

On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides” as “ follows:

SEC. 180. Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand. — On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit,

or note: **Provided**, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: **Provided, however**, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section.

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to "(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

SECTION 3. Definition of Terms. — For purposes of these Regulations, the following terms shall mean:

(b) "Loan agreement" — refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.

The terms " Loan Agreement" under Section 180 and " Mortgage" under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.

SECTION 6. Stamp Tax on all Loan Agreements. — All loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines shall be subject to the documentary stamp tax of thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.

In cases where no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code, as amended.

Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp tax may be imposed.

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Accordingly, Assessments Notices Nos. SP-DST-96-00020-2000 and SP-DST-97-00021-2000 issued for deficiency documentary stamp taxes due on the instructional letters as well as journal and cash vouchers evidencing the advances FDC extended to its affiliates are declared valid.

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All revenue officials and employees are enjoined to give this Circular as wide publicity as possible. Accordingly, all employees engaged in the audit and review of audit cases are enjoined to assess deficiency DST, if warranted, on these kinds of transactions.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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/RMC-DST