



Tax Law  
for  
Business

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## **Sale of precious metals on tighter tax watch**

THE Bureau of Internal Revenue (BIR) has enforced a stricter measure to ensure that the government gets hold of its proper share in the sale of jewelry, gold and other metallic minerals.

A tax-collection scheme called the "advance payment of probable taxes due" was adopted by the BIR, pursuant to Revenue Regulations (RR) 5-2013, issued on March 21, 2013. According to the regulations, the revenue measure is the government's response to the strategy being resorted to by the sellers of precious metals to avoid being taxed.

The Tax Code imposes the following taxes on the sale of gold and other metallic minerals: 1) excise tax; 2) value-added tax (VAT) or percentage tax; and 3) income tax. On the other hand, the sale of jewelry is subject to 1) VAT or percentage tax; and 2) income tax.

Excise tax is payable at the place of production. However, if the products have been removed from the place of production without the payment of excise tax, the person having possession thereof shall be liable. The rate is 2 percent, based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and Customs duties, net of excise tax and VAT, in the case of importation.

The sale of metallic minerals to persons and entities, except sale of gold to the Bangko Sentral ng Pilipinas (BSP), is subject to 12-percent VAT on the gross selling price if the gross selling price exceeds P1,919,500; otherwise, it is subject to 3-percent percentage tax. The sale of gold to the BSP is subject to 0-percent VAT if the seller is VAT-registered.

Since the sale is an income-generating activity, it is, likewise, subject to income tax. RR 2-98, as amended, has included income payments on purchases of minerals, mineral products and quarry resources among the payments that are subject to creditable withholding tax. The prevailing withholding tax rate is 5 percent.

Last year RR 6-2012 was issued to provide guidelines on the imposition of excise tax, VAT, and income tax on the sale of jewelry, gold and other metallic minerals to the BSP and to other entities. To facilitate the collection of taxes thereon, the regulations constituted all buyers as withholding agents for the collection of the 2-percent excise tax and the 5-percent creditable withholding tax.

The taxing authority, however, observes that sellers opt to sell jewelry, gold and other metallic minerals to foreign entities that come to the Philippines for a limited period and only for the purpose of buying such minerals, instead of selling to the BSP and other entities that withhold taxes. Consequently, the BIR finds it hard to collect the taxes rightfully due the government. To cover this loophole, the Department of Finance (DOF) prescribed the rules on the advance payment of business and income taxes and actual payment of excise tax by sellers of jewelry, gold and other metallic minerals to non-resident individuals not engaged in trade or business or to non-resident foreign corporations.

Under the new regulations cited, sellers are now required to pay the applicable taxes in advance to the RDO having jurisdiction over the place where the transaction occurs. The advance payments are creditable against the actual income and taxes due for the taxable period for which such payment pertains. As regards the VAT paid in advance, the same, together with any input tax, shall be deducted from the output tax to determine the VAT payable.

The regulations further impose upon the nonresident buyers the obligation to maintain a record of the transactions and require the seller to sign an order slip or any document which will be the basis of the revenue officers in assessing the correct tax due. Operators of establishments where the subject transactions are conducted are required to advise the concerned BIR Revenue District Office (RDO) about the sale. Failure to do so constitutes a violation of the provisions of the Internal Revenue Code. On the basis of the information gathered, the Special Investigation Division (SID) of the concerned RDO shall check if the seller complies with his obligations. Any tax due shall be collected on the spot.

With this new tax-collection procedure, the BIR is looking at more revenues going into the government coffers. Such revenues are expected to come only from those transactions that are advertised or at least displayed, as it may still be hard for the BIR to monitor the selling of precious metals that is not ostensible. The BIR can easily spot purchasing in large scale, but transactions involving relatively small amounts may escape the eyes of revenue collectors.

If advance payment of taxes turns out to be very effective on sales of precious metals, the possibility of adopting this collection scheme to other hard-to-collect taxes may not be far away.

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