

REVENUE MEMORANDUM CIRCULAR NO. 8-2024 issued on January 15, 2024 clarifies the provisions of Revenue Regulations (RR) No. 16-2023 imposing Withholding Tax on gross remittances made by electronic marketplace (e-marketplace) operators and digital financial services providers (DFSPs) to sellers/merchants.

The Withholding Tax obligation of e-marketplace operator and DFSPs shall take effect after fifteen (15) days following the publication of RR No. 16-2023 in a newspaper of general circulation or the Official Gazette, whichever comes first. RR No. 16-2023 was first published in Manila Bulletin on December 27, 2023. Thus, RR No. 16-2023 shall take effect on January 11, 2024.

The e-marketplace operators and DFSPs are allowed a period of ninety (90) days from the date of issuance of the Circular to comply with the relative policies or requirements of other government agencies, if any, and to give them an opportunity to adjust and properly comply with the provisions of RR No. 16-2023 prior to the actual imposition of the prescribed Creditable Withholding Tax. Further, existing unregistered sellers/merchants shall comply with the applicable requirements enumerated in Q4 - A4 of the Circular within the same prescribed period.

The gross remittances of ₱500,000.00 not subjected from Creditable Withholding Tax shall consist of the total amount of remittances received by the online seller/merchant from e-marketplace operators and DFSPs; provided, however, that, in case any of the e-marketplace operators and DFSPs has determined that the gross remittances in its online platform exceeded ₱500,000.00 anytime during the taxable year, the prescribed Withholding Tax shall be automatically deducted from the particular remittance exceeding the said threshold and the same shall be imposed on subsequent remittances.

Seller/Merchants are required to register their business with the BIR and submit a copy of the BIR-issued Certificate of Registration as part of the documentary requirements by e-marketplace operator prior to the use of the e-marketplace facility.

If the gross remittance received from the e-marketplace operators or DFSPs is determined and/or expected not to exceed the threshold of ₱500,000.00, seller/merchants shall submit a Sworn Declaration (SD) duly received by the BIR and in the form prescribed in Annex "A" of the Circular upon application (or within the transitory period in case of existing participant sellers/merchants of e-marketplace operators and DFSPs) with e-marketplace or DFSP declaring that the total gross remittance to be received from the e-marketplace operators or DFSPs shall not exceed ₱500,000.00. The BIR-received SD shall be submitted thereafter on or before the 20th day of the first month of each taxable year.

In case of failure to submit the prescribed SD, regardless of the actual total income or gross remittance, the Withholding Tax imposed by RR No. 16-2023 shall automatically be deducted by the e-marketplace operator or DFSP.

Should the gross remittances exceed the ₱500,000.00 at any time during the taxable year, the prescribed BIR-received SD shall be immediately submitted to the e-marketplace operators or DFSPs by the sellers/merchants.

If a seller/merchant is exempt from Income Tax or subject to a lower Income Tax rate pursuant to any existing law or treaty, he/she shall submit a duly issued certification to the e-marketplace operator as proof of exemption or entitlement to a lower tax rate pursuant to the provisions of Section 2 of RR No. 16-2023, which states:

- (c) if the seller/merchant is duly exempt from or subject to a lower income tax rate pursuant to any existing law or treaty. Provided that, the concerned seller/merchant is able to secure the necessary certification, clearance, ruling,

or any other document serving as proof of entitlement to the said exemption or lower income tax rate. The said proof of entitlement shall be submitted by the seller/merchant to the e-marketplace operator or digital financial services provider concerned.'

All existing sellers/merchants selling goods and services in an e-marketplace not yet BIR-registered shall register their businesses with BIR pursuant to the Tax Code, as amended. Moreover, after the transitory period prescribed under the Circular, e-marketplace operators and DFSPs shall not allow unregistered businesses to sell goods and services in their platform/facility.

E-marketplace operators and DFSPs are required to observe the following:

- a. Ensure that all sellers/merchants applying for the use of the e-marketplace or DFSP platforms are registered with the BIR by requiring the submission of their Certificate of Registration (BIR Form No. 2303) prior to allowing sellers/merchants to use the e-marketplace facility or DFSP platform, as the case may be.
- b. Require sellers/merchants who are duly exempt from or subject to a lower Income Tax rate pursuant to any existing law or treaty to submit the necessary certification or any other document as proof of entitlement to the said exemption or lower Income Tax rate.
- c. Require sellers/merchants to submit a copy of the BIR-received SD. In case the sellers/merchants failed to submit the BIR-received SD, regardless of the actual income or gross remittances, the Withholding Tax shall be automatically deducted under RR No. 16-2023.

Further, when the seller/merchant failed to submit the required BIR-received SD to the e-marketplace operator or DFSP within the prescribed period, the Withholding Tax shall likewise be automatically deducted.

- d. Monitor the gross payments of buyers/customers and deduct the Withholding Tax prescribed under RR No. 16-2023 before subsequently remitting the same to the concerned sellers/merchants.
- e. Provide sellers/merchants the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) within the period prescribed under the Tax Code, and other relevant revenue issuances, or upon request by the sellers/merchants.

The Withholding Tax obligation of the e-marketplace operator and DFSP in cases where the accumulated gross remittances to a seller/merchant exceed the prescribed ₱500,000.00 threshold shall commence:

- a. Upon receipt by the e-marketplace operator and DFSP of the BIR-received SD indicating that the sellers/merchants have exceeded the ₱500,000.00; or
- b. When the seller/merchant failed to submit the required BIR-received SD to the e-marketplace operator or DFSP within the prescribed period; or
- c. When the e-marketplace operator or DFSP has determined that its total gross remittances to the concerned seller/merchant have exceeded the ₱500,000.00 threshold.

The sellers/merchants are not allowed to receive payments through their personal/individual accounts. In all payments/remittances/transfers covered under RR No. 16-2023, the seller/merchant's account shall, at all times, be under the BIR-registered tradename of the seller/merchant. The BIR shall monitor usage of account under the registered tradename of the seller/merchant.

In case the e-marketplace platform accepts or collects payment for the goods and remits the same to the seller, this shall be subject to withholding pursuant to RR No. 16-2023 where Withholding Tax shall be deducted before its remittance of the income payment to the seller.

In the event that the payment is transmitted to the seller/merchant through different facilities, the last facility which has control of the payment before completely remitting the same to the seller/merchant shall be liable to withhold the taxes under RR No. 16-2023.

The violation of any of the provisions of RR No. 16-2023 shall be subject to appropriate penalties under the Tax Code, relevant laws, rules and regulations.