



# Philippine Economic Zone Authority

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MEMORANDUM CIRCULAR NO.

2006 010 *esp*

**TO :** All PEZA Enterprises Classified as Phase IV Commercial and Industrial Customers for Purposes of Implementation of MERALCO Refund Arising from Supreme Court Decision

**FROM :** Director General LILIA B. DE LIMA *Lilia B. De Lima*

**DATE :** March 13, 2006


**SUBJECT:** Applicability of the Exemption from Withholding Tax vis-à-vis Revenue Regulations (RR) No. 8-2005 and Revenue Memorandum Order (RMO) No. 22-2005

Pursuant to RR No. 14-2002 dated September 9, 2002 [Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as amended] and Revenue Memorandum Circular No. 72-2004 dated November 16, 2004, income payments to PEZA-registered enterprises under the Income Tax Holiday (ITH) or 5% Gross Income Tax (GIT) incentives are exempt from withholding tax. This statement is contained in the standard Certification of Incentives (COI) issued by PEZA to requesting enterprises.

On the other hand, RR No. 8-2005 dated February 23, 2005 [Amending further pertinent provisions of Revenue Regulations No. 2-98 xxx providing for the inclusion of Income Payments subject to Creditable Withholding Tax under Section 2.57.2(U) on Manila Electric Company (MERALCO) Refund arising from Supreme Court Case G.R. No. 14814 of April 9, 2003 to Customers under Phase IV as approved by Energy Regulatory Commission (ERC)] prescribes a withholding tax rate of 25% for MERALCO customers with active contracts and 32% for those with terminated contracts. RR No. 8-2005 does not mention any exemption from said withholding tax.

Thus, in our letter to then Commissioner Guillermo L. Parayno, Jr., dated June 29, 2005, we requested from the Bureau of Internal Revenue (BIR) that MERALCO refunds to PEZA-registered enterprises be exempt from the 25%-32% withholding tax prescribed under RR No. 8-2005, and that in the event that the refunds are attributed to activities not entitled to income tax incentives, the income tax due thereon be paid by the PEZA enterprise upon the filing of its annual or quarterly income tax returns, as applicable.

Our request was given favorable consideration by the BIR through its issuance of RMO No. 22-2005 dated August 2, 2005, which provides policies and guidelines for customers claiming exemption from the withholding tax prescribed under RR No. 8-2005. Said customers are required to submit to MERALCO a Certificate of Exemption (COE) or ruling specifically issued by BIR for this purpose.

	<b>PHIL. ECONOMIC ZONE AUTHORITY</b>
Received by: _____	_____
Date: _____	3/14/06
Time: _____	8:30 am
ENTERPRISE REGULATIONS DEPARTMENT INCENTIVES MANAGEMENT DIVISION	

**"Trabaho at kabuhayan sa bawat tao"**  
*President Gloria Macapagal-Arroyo*

PEZA enterprises are therefore advised to secure an updated COI from the PEZA – Incentives Management Division in support of their applications for COE or ruling with the BIR.

Further, for purposes of proper reckoning of incentives, the tax treatment of MERALCO refunds whether or not said refunds have been subjected to the withholding tax prescribed under RR No. 8-2005, shall be as follows:

<b>Income Tax Incentive Corresponding to the Period Covered by MERALCO Refund</b>	<b>Tax Treatment of MERALCO Refund</b>
Income Tax Holiday	Income Tax Holiday
5% Gross Income Tax	5% Gross Income Tax
None	Normal Corporate Income Tax

For your guidance and reference. *J. J.*