



TAX LAW FOR BUSINESS  
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## **Branch Profit Remittance Tax on Foreign Airline Companies**

Multinational companies engaged in the business of air transportation in international traffic are usually operating in the Philippines through branches. These operations had always been the subject of tax controversies, such as the sources of income or the situs of income taxation. To some extent, this particular issue had been put to rest with the modification introduced by the 1997 Tax Code, as implemented by RR No. 15-02. I will discuss in this article the branch profit remittance tax.

As a rule, an international air carrier having flights originating from any port or point in the Philippines, irrespective of the place where passage documents are sold or issued, is subject to the Gross Philippine Billings (GPB) Tax of two and one-half percent (2½%). However, if the international air carrier is a resident of a country of which the Philippines has an existing tax treaty, the maximum rate provided in the applicable treaty should govern, especially if the rate is lower than 2 ½%.

Most tax treaties to which the Philippines is a signatory provides that the tax imposed by the Philippine government shall not exceed one and one-half percent (1 ½%) of the gross revenues derived from Philippine sources. Thus, while international carriers doing business in the Philippines should normally pay 2 ½% on their gross Philippine billings, the tax should be limited to 1 ½% of the gross revenues derived from Philippine sources in case there is a binding tax treaty.

Would the remittance to the foreign head office of income which was subjected to the tax on GPB be a subject of a branch profit remittance tax? The Philippine Tax Code imposes a tax of 15% on any profit remitted by a branch to its head office. Does this apply to a branch of an international air carrier subject to tax on GPB?

The Bureau of Internal Revenue (BIR) is not consistent on its position on the issue. In fact, for one airline company, it changed its position three times. The BIR initially ruled that any profit remitted by the said airline company to its head office is subject to 15% branch profit remittance tax. After a re-study, it subsequently reversed its position by saying that the airline is not subject to branch profit remittance tax. It later reverted to its first ruling by saying that there is no basis for the exemption.

With respect, however, to an airline company which is a resident of country of which the Philippines has a tax treaty, the BIR had issued various rulings in the past confirming that the total amount of corporate income tax and branch profit remittance tax that may be imposed by the Philippines on profits of aircrafts shall not exceed 1 ½% of the gross revenues derived from Philippine sources. Effectively, by reason of the tax treaty, the airline company is no longer subject to the branch profit remittance tax.

Also referring to the provision of the tax treaty, the Tax Court had the occasion to rule that the total incidence of taxes imposed by the Philippines on profits from the operation of aircraft in international traffic shall not exceed the lesser of one-half percent of the gross revenues derived from sources within the Philippines or the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State. The total amount of corporate income tax and branch profits remittance tax that may be imposed on such profits shall not exceed the rates provided in the treaty. Consequently, the 15% tax is not imposable.

The clear import of these pronouncements is that the Philippine income tax on international air carriers shall not exceed one and one-half percent (1 ½%) of the gross revenues derived from sources within the Philippines. They shall not be subjected further to the 15% branch profit remittance tax.

The tax treaties concluded by the Philippine government with other countries shall have the effect of a law that would govern the tax on transactions between the residents of both countries. In this regard, a reference to the respective tax treaty should be made if a similar provision exists on the taxation of income of international carriers deriving income from the Philippines. And while the provisions of the tax treaty may be invoked, taxpayers are advised to secure a ruling from the BIR for the application of the treaty provisions.