MAKATI COMMERCIAL ESTATE ASSOCIATION, INC.
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September 16, 2013

MEMORANDUM CIRCULAR 2013-09

TO : ALL MACEA MEMBERS
RE : BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012

Please be informed that in the case entitled "***First e-Bank Tower Condominium Corporation v. Bureau of Internal Revenue***" docketed as Special Civil Action No. 12-1236 for Declaratory Relief pending before Branch 146 of the Regional Trial Court of Makati City, the Court issued a Resolution dated September 05, 2013 giving due course to the Petition for Declaratory Relief and **declaring the issuance of Revenue Memorandum Circular No. 65-2012 (RMC 65-2012) as invalid**, the dispositive portion of which states:

> "WHEREFORE, In view of the foregoing, the Declaratory Relief is given due course. The issuance of Revenue Memorandum Circular No. 65-2012 is hereby declared to have been invalidly issued."

In the said Resolution, the Court held that:

1. The aforesaid Petition is the appropriate remedy given the obtaining circumstance of the above-captioned case;

2. All the requirements for filing a case for declaratory relief are present in the above-captioned case: (a) the issue propounded by petitioner is justiciable; (b) the controversy between petitioner and respondent are adverse to each other; (c) petitioner has a legal interest in the controversy considering that it will greatly affect his right as a taxpayer; and (d) the issue raised in the above-captioned case is ripe for judicial determination;

3. RMC 65-2012 did not only clarify an existing law; the same changes its import and interpretation that in so doing prejudices the right of petitioner as a taxpayer; and

4. Since the BIR in passing RMC 65-2012 failed to accord petitioner or those similarly situated due notice and opportunity to be heard before issuing the same, the issuance thereof was arbitrary and in violation of the consitutional right to due process. Accordingly, the same was invalidly issued.

Please note that while RMC 65-2012 was declared invalid, such declaration is not yet executory as respondent BIR may opt to file a motion for reconsideration in the above-captioned case, and thereafter file an appeal if necessary.

A copy of the aforesaid Resolution may be obtained from Branch 146 of the Regional Trial Court of Makati City.

Meanwhile, we shall continue to monitor the above-captioned case and apprise you of any development as it arise.

Please be guided accordingly,

Thank you.

DAVID L. BALANGUE
President