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TAX LAW FOR BUSINESS

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Invalidating RR 10-2008

ON January 24 the Supreme Court (SC) nullified Sections 1 and 3 of Revenue Regulations (RR) 10-2008, the implementing regulations of Republic Act (RA) 9504. Recall that RA 9504 amended certain provisions of the National Internal Revenue Code by, among others, increasing the basic personal exemption for individual taxpayers to P50,000 and the additional exemption for each dependent to P25,000. The same law granted minimum-wage earners (MWEs) exemption from payment of income tax on their minimum wage, including holiday pay, overtime pay, night-shift differential and hazard pay. The law became effective on July 6, 2008, after it was signed by the President and the required publication was made.

In implementing the new law at that time, RR 10-2008 made the availment of the benefits of the law effective only on July 6, 2008, the date when RA 9504 took effect. For the increase in personal and additional exemption, this was done by pro-rating over a period of six months. Likewise, RR 10-2008 made the exemption of the income of MWEs subject to some conditions. Essentially, an MWE would be exempt from tax if his or her bonuses and other additional benefits do not exceed the allowable amount (ceiling) of other benefits of P30,000 (now P82,000). If such worker or employee does not pass the requirement, his or her entire earnings are not exempt from income tax. Consequently, his or her minimum wage will be subject to withholding tax.

In declaring the July 6, 2008, effectivity of the new benefits, as provided in RR 10-2008, null and void, the Court ruled RA 9504, being a social legislation, should be enjoyed by individual taxpayers for the entire year of 2008, and not just beginning July 6, 2008. The Court also noted the policy in this jurisdiction, especially on personal and additional exemptions, is full taxable year treatment. As to the added condition for the entitlement of MWEs to tax exemption, the Court declared that the added requirement is not found in the law. Hence, it was also nullified.

Because of these pronouncements, the SC directed both the secretary of finance and the commissioner of internal revenue to grant a refund or allow the application of the refund by way of withholding-tax adjustments, or allow a claim for tax credits by (i) all individual taxpayers whose incomes for taxable year 2008 were subjected to the prorated increase in personal and additional tax exemptions; and (ii) all MWEs whose minimum-wage incomes were subjected to tax for their receipt of the 13th month pay and other bonuses and benefits exceeding the threshold amount.

According to the National Statistics Authority, the total number of employed persons in 2016 was approximately 40.8 million. With this, wage and salary workers accounted for 61.7 percent of the total employed persons, with employees in the private sector accounting for the largest number at 48.2 percent. For the period January 2001 to October 2004, about 43 percent to 53 percent of employed Filipinos were wage and salary workers. Assuming that such statistics also apply for the year 2008, the finance department and the Bureau of Internal Revenue (BIR) would have to review millions of taxpayers' records to determine the correct amount of taxes to be refunded, only to comply with the SC's directive. With administrative feasibility being one of the pillars of a sound tax system, compliance with the Court's directive to grant the refund could cause undue burden upon the government, and even the taxpayers who could be forced to prove their entitlement to the refund. It would be best if the finance department and the BIR issue rules for the efficient implementation of the SC's order.

The portion that has impact in the present and future tax compliance, though, is the nullification of the added condition for the exemption of MWEs. Both the employers and the employees should now be aware that the minimum wage should always be exempt from tax, even if the employee earns other income over and above the ceiling of the nontaxable other benefits. The taxation of the excess over these other benefits should not affect the exemption of the minimum wage. As the Court says, the law exempts the amount afforded to the lowest paid employees and should always be exempt from tax. These rules may, of course, change again with the tax-reform program being crafted by Congress. And as we have learned from this new case, a new beneficial rate, regardless of when the law becomes effective, should be available for the whole year, unless the law itself will provide for its effectivity.

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