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TAX LAW FOR BUSINESS

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Taxable status of ADB Filipino employees

Relying on the tax-exemption provisions of the Asian Development Bank (ADB) Charter Agreement and the ADB Headquarters Agreement and in the absence of an express and unequivocal Bureau of Internal Revenue (BIR) issuance on the matter, ADB Filipino employees did not pay income tax since its establishment. This changed when, on April 12, 2013, then-Commissioner of Internal Revenue (CIR) Kim Jacinto-Henares issued Revenue Memorandum Circular (RMC) 31-2013, which provides, among others, that only non-Filipino ADB employees are exempt from Philippine income tax.

Certain Filipino ADB Employees then assailed RMC 31-2013 before the regional trial court (RTC), which, at that time, still had jurisdiction over the validity of BIR issuances. The RTC declared the provision that only exempts non-Filipino ADB employees as void. Although the ADB Filipino employees won at the RTC level, litigation would continue on to the Court of Appeals and finally to the Supreme Court (SC), which has the final say on the issue.

Considering, however, that certain Filipino ADB employees have already paid their income taxes in compliance with RMC 31-2013, they had only within two years from the date of payment of the tax to file a claim for refund pursuant to Section 229 of the Tax Code. Hence, certain Filipino ADB employees filed their respective refund claims giving occasion to the Court of Tax Appeals (CTA), now vested with jurisdiction, to rule on the validity of RMC 31-2013.

In CTA Case 9075 promulgated on February 9 and CTA Case 9041 promulgated on February 24, both by the CTA First Division, the Court opined that the RTC decision declaring the provision that only exempts non-Filipino ADB employees as void is not binding precedent. This means that the CTA can arrive at ruling contrary to the RTC decision. So it did. The CTA ruled that Filipino ADB employees are subject to income tax. While the ADB Charter provides a tax-exemption provision, the same contains a proviso where a member-country may retain its right to tax its citizens or nationals, provided a declaration was made. Similarly, the ADB Headquarters Agreement also declares that the same is subject to the power of the member-country to tax its nationals. The Court found that the Philippine government made such a specific declaration when it ratified and confirmed the ADB Charter. Elsewise stated, the provision of RMC 31-2013, which states that only non-Filipino ADB employees are exempt from Philippine income tax, is valid.

The same conclusion was reached recently in CTA Case 9081 promulgated on June 8 by the CTA Second Division, making it highly probable that the CTA en banc, will affirm the taxable status of ADB Filipino employees. The difference, however, of CTA Case 9081 with the previous cases, is that the Court (with one justice dissenting) granted a partial refund on the basis of Section 246 of the Tax Code that provides that no issuance of the CIR shall be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayer. As RMC 31-2013 took effect only on May 2, 2013, income-tax payments made prior to said date should be refunded. On that regard, CTA Case 9081 conflicts with CTA Case 9075 and CTA Case 9041.

In CTA Case 9075 and CTA Case 9041, the CTA held that the taxability of the income received by ADB Filipino employees is not dependent on the validity or invalidity of RMC 31-2013, as the same is based on existing provisions of the Tax Code in relation to the treaty and/or agreement between the Philippine government and ADB. Thus, beginning the taxable year of

their employment with ADB, said Filipino ADB employees are obliged to pay income tax. This was further elaborated in the dissenting opinion of Justice Castañeda in CTA Case 9081 where he stated that RMC 31-2013 was issued merely to construe existing provisions of the Tax Code in relation to existing treaty obligations, and not to impose additional burdens not found under the law.

In essence, while Section 246 of the Tax Code indeed provides that a reversal of a general interpretative rule issued by the CIR cannot adversely prejudice a taxpayer who, in good faith, relied on such general interpretative rule prior to its reversal, what general interpretative rule is being relied upon by the ADB Filipino employees? As pointed out by the CTA, it is surely, not the letter-opinion of a regional director.

In light of the various CTA cases discussed above, all is not lost for the ADB Filipino employees. Just as the RTC decision may not be considered as binding precedent, the same is likewise true of CTA decisions when appealed to the SC. While entitled to great weight, CTA decisions can be reversed by the SC. After all, in our system, the SC is the final arbiter of any justiciable controversy. It has the last word on what the law is.

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