



Tax Law
for
Business

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Taxation of Filipinos employed by international groups, foreign embassies

FOREIGN governments, embassies, diplomatic missions and international organizations in the Philippines are exempt from the duty to withhold taxes on salaries and emoluments they pay their employees. But Filipinos, whether as employees or officers, are not exempt from paying tax on their salaries.

Such is the clear message of Revenue Memorandum Circular (RMC) 31-2013 issued on April 14, the eve of the deadline for filing of income-tax returns. The tax exemption given to foreign embassies and organizations does not carry with it the exemption of their Filipino employees from income received under such employment. Thus, the RMC requires them to file their income-tax return and pay taxes.

Section 23 of the Tax Code lays down the basis for the RMC. A resident Filipino citizen is taxable on income derived worldwide while a resident or non-resident alien is taxable only on income earned in the Philippines.

The exemption granted to foreign embassies and certain international organizations finds support in different international practices and agreements by member-states. In most agreements, the tax exemption given to employees is limited only to non-Filipinos. In short, Filipinos employed in these tax-exempt organizations are not covered by the tax exemption, thus, their income from employment is still subject to tax. To name a few, Filipinos employed by the following organizations are not exempted from Philippine income tax:

- a. Foreign embassies/diplomatic missions
- b. Aid agencies of foreign governments
 - 1. Japan International Cooperation Agency
 - 2. Deutsche Gesselschaft für Internationale Zusammenarbeit
 - 3. Australian Agency for International Development
- c. United Nations and its specialized agencies
 - 1. United Nations
 - 2. Food and Agriculture Organization
 - 3. International Monetary Fund
- d. Organizations covered by separate international agreement or specific provisions of law
 - 1. Asian Development Bank
 - 2. Asean Centre for Biodiversity
 - 3. International Rice Research Institute
- e. Other agencies or international organizations

While RMC 31-2013 may seem to be a new issuance, its principle is not relatively new. Even prior to its issuance, the Bureau of Internal Revenue already adopted the same principle in BIR Ruling 080-97 on July 11, 1997. The BIR emphasized that Filipino citizens working in the embassy of Peru are liable to pay income tax on their compensation while the embassy itself, being an extension of the territorial jurisdiction of Peru, is exempted from withholding taxes on that compensation.

Likewise, in BIR Ruling 29-99, the bureau denied the request of Asian Development Bank that salaries received by its Filipino staff assigned to work in one of its branches outside the Philippines are not taxable as this goes against the very basic rule that Filipino citizens are taxable on all income from sources within and without the Philippines, unless clearly exempted.

In the same ruling, the BIR had given the Asian Development Bank the status of a regional headquarters of a multinational company. Citing Section 25 (C) of the Tax Code, the BIR ruled that its Filipino employees are subject to a preferential tax rate of 15 percent on their gross income. The same principle was adopted in a more recent ITAD BIR Ruling 232-11 wherein the Asean Center for Biodiversity (ACB) was exempted from its obligation to withhold income tax on its income payments, as well as on its compensation payments. However, its Filipino employees were required to file their income-tax returns and pay the corresponding tax on their salaries received from the ACB.

Using as basis the principle laid down in the rulings of the ADB and ACB, Filipino employees of other international organizations that may be considered in the same footing as a regional headquarters may avail themselves of the lower rate of 15 percent. But as a prudent measure, it is always better to secure the approval of the BIR by way of ruling.

Under Philippine taxation laws, one cannot really hide behind one's immunity because the general rule is still taxation and exemption, the exception.

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