REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Revenue Regulations No. 2-98, as amended; 3-98; 8-2000	OT- 008-2023

Person to Contact: Chief, Law & Legislative Division
Tel. Nos. 926-55-36/927-09-63

Date: FEB 16 2023

ISLA LIPANA & CO.
29/F Philam Tower,
8767 Paseo de Roxas,
Makati City, Philippines

Attention: **GERALDINE C. ESGUERRA-LONGA**
Partner

Gentlemen:

This refers to your request on behalf of your client, Marel Philippines Services Corp. ("**MPSC**"), for confirmation that the *per diems* provided by MPSC to its Filipino field service engineers are exempt from withholding tax on compensation pursuant to Section 2.78.1(A)(6)(b) of Revenue Regulations ("**RR**") No. 2-98, as amended.

Background

1. MPSC is a domestic corporation duly registered with the Securities and Exchange Commission and with principal office at Unit 701, 7/F BSA Twin Towers Bank Drive Ortigas Center, Brgy. Wack Wack, Mandaluyong City;

2. MPSC is primarily engaged in providing technical and business process services and activities to clients in the fish, meat and poultry industries domiciled in the Philippines and abroad and has field engineers who are travelling to client's site in order to provide technical support and for demonstrating, installing, repairing and maintaining MPSC's products and systems;

3. MPSC provides its field engineers the following *per diem* to cover the latter's cost of daily expenses during business travels and provide sufficient financial support to enable its employees to meet the demands of their jobs while doing business on behalf of MPSC:

    a. PhP750.00 for domestic travel per employee;[1] and

[1] Based on the minimum allowable Daily Travel Expenses (DTE) through Memorandum Circular No. 29, s. 2019 (Executive Order No. 77 "Prescribing Rules and Regulations and Rates of Expenses and Allowances for Official Local and Foreign Travel of Government Personnel"), for official government travels within the country, adjusted accordingly based on a reasonably study conducted by MPSC. The rate carved out the hotel and lodging of travelling employees which can be reimbursed through receipted claims.

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b. PhP1,900 to PhP4,300 for international travels, depending on the country of assignment;[2]

4. The *per diems* are specifically for meals and other expenses incidental to the business and do not include expenses for accommodation travel, and transportation which are subject to reimbursement and substantiation; and

5. The *per diems*, which are only available to Filipino service engineers deployed to domestic or international locations for work where an overnight stay is required, are pre-calculated based on the cost of living in a particular destination.

In reply, please be informed that Section 2.78.1(A)(6) of RR No. 2-98[3], as amended, reads as follows:

> *"SECTION 2.78. Withholding Tax on Compensation. – The withholding tax on compensation income is a method of collecting the income tax at source upon receipt of the income. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent.*
>
> *SECTION 2.78.1 Withholding of Income Tax on Compensation Income. –*
>
> *(A) Compensation Income Defined. – In general, the term "compensation" means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code.*
>
> *The name by which the remuneration for services is designated is immaterial. Thus, salaries, wages, emoluments and honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is, at the same time, an employee of the employer/ corporation; taxable bonuses and the fringe benefits except those which are subject to the fringe benefits tax under Sec. 33 of the Code; taxable pensions and retirement pay; and other income of a similar nature compensation income.*
>
> *The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes compensation. Thus, it may be paid on the basis of piece-work, or a percentage of profits; and may be paid hourly, daily, weekly, monthly or annually.*
>
> *xxx xxx xxx*
>
> *(6) Fixed or variable transportation, representation and other allowances –*

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[2] Based on the rates published by the International Civil Service Commission (ICSC) of the United Nations on its DSA Circular ICSC/CIRC/DSA/538 dated March 1, 2020, adjusted based on the reasonable study conducted by MPSC. The rate carved out the accommodation and lodging, transportation and other expenses of travelling employees which can be reimbursed through receipted claims.

[3] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as amended" relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

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(a) IN GENERAL, fixed or variable transportation, representation and other allowances which are received by a public officer or employee or officer or employee of a private entity, in addition to the regular compensation fixed for his position or office, is compensation subject to withholding.

(b) Any amount paid specifically, either as advances or reimbursement for travelling, representation and other bonafide ordinary and necessary expenses incurred or reasonably expected to be incurred by the employee in the performance of his duties are not compensation subject to withholding, if the following conditions are satisfied:

(i) It is for ordinary and necessary travelling and representation or entertainment expenses paid or incurred by the employee in the pursuit of the trade business or profession; and

(ii) The employee is required to account/liquidate for the foregoing expenses in accordance with the specific requirements of substantiation for each category of expenses pursuant to Sec. 34 of the Code. The excess of actual expenses over advances made shall constitute taxable income if such amount is not returned to the employer. Reasonable amounts of reimbursements/advances for travelling and entertainment expenses which are pre-computed on a daily basis and are paid to an employee while he is on an assignment or duty need not be subject to the requirement of substantiation and to withholding." (Underscoring supplied)

Based on the foregoing, it shows that any advances received by employees of a company, whether rank and file or managerial employees, in addition to their compensation relating to the ordinary and necessary expenses incurred or reasonably expected to be incurred by such employees in the performance of their duties and responsibilities are not compensation subject to withholding tax: *provided* however, that the qualifications stated in the law are fully complied with.

Moreover, for managerial employees, Section 2.33 (C) of RR No. 3-98[4] provides that allowances received by the same that are necessary to the trade or business or for the convenience of the employer are fringe benefits not subject to fringe benefits tax, to *wit*:

"***SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS***

xxx xxx xxx

(C) Fringe Benefits Not Subject to Fringe Benefits Tax — In general, the fringe benefits tax shall not be imposed on the following fringe benefits:

xxx xxx xxx

(5) If the grant of fringe benefits to the employee is required by the nature of, or necessary to the trade, business or profession of the employer; or

(6) If the grant of the fringe benefit is for the convenience of the employer."

Having all these in regard, and considering the nature for which these allowances are paid, it is evident that allowances or benefits given to rank and file or managerial employees

[4] Implementing Section 33 of the National Internal Revenue Code, as Amended by Republic Act No. 8424 Relative to the Special Treatment of Fringe Benefits, Revenue Regulations No. 03-98, May 21, 1998.

that are advanced for: (1) travelling, representation and other *bonafide* ordinary and necessary expenses reasonably expected to be incurred by such employee in the performance of his duty; and/or (2) for the convenience of the employer, are not compensation or fringe benefit (in case of managerial employees) but merely advances for the expenses necessary for the trade or business of such employer.

Such being the case, since the *per diems* granted to Filipino field engineers of MPSC, whether rank and file or managerial employees, are advances made particularly for travel, meal and other ordinary and necessary expenses reasonably expected to be incurred in the performance of their duties, this Office hereby confirms your opinion that the same are not subject to withholding tax on compensation pursuant to Section 2.78.1(A)(6)(b) of RR No. 2-98, as amended. Also, *per diems* granted to managerial employees are not subject to fringe benefits tax pursuant to Section 2.33 (C) of RR No. 3-98.

Further, since the said *per diems* are pre-calculated based on the cost of living in a particular destination and are paid to the employees, while they are on assignment or duty, they are not subject to the requirements of substantiation and withholding.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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