July 12, 2018

BIR RULING NO. 1069-18

Section 32 (B) (7) (c) (iv), Tax Code; RMC 46-2013; BIR Ruling No. DA-(ECB-023) 642-09

Mr. Orlan A. Calayag
Administrator, National Food Authority
Philippine Sugar Center Bldg., North Ave.
Diliman, Quezon City

Sir :

This refers to your letter dated January 9, 2014, endorsed by the Chief of Staff of the Secretary of Finance on January 16, 2014, requesting, in effect, for a ruling on whether the Collective Negotiation Agreement Incentive (CNAI) received by officials and employees of the National Food Authority (NFA) qualifies as "other benefits" under Section 32 (B) (7) (e) of the Tax Code of 1997, as amended (Tax Code), for purposes of determining the taxability of the value of benefits beyond the P30,000 threshold.

Documents show that sometime in June 2013, NFA officials and employees each received P16,400 as (CNAI) pursuant to the CNA between the NFA Management and the NFA Employees Association (NFAEA).

On December 11, 2013, the NFA Legal Affairs Department issued Memorandum LAD-C-L-287 wherein it rendered an opinion that CNAI cannot be considered "other benefits" because it is not specifically mentioned in Section 32 (B) (7) (c) of the Tax Code. Accordingly, NFA Management, in the meantime, did not deduct the corresponding withholding tax for CNAI and further sought the opinion of the Office of the Government Corporate Counsel (OGCC) on the matter.

Citing Revenue Memorandum Circular (RMC) No. 46-2013 titled "Clarification on the Taxability of Benefits under Collective Negotiations Agreement (CNA) Granted to Government Employees' Organizations Duly Approved/Accredited by the Civil Service Commission," the OGCC concluded that —

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"The PhP16,400.00 CNAI granted to NFA officials and employees is covered by the phrase 'other benefits' under the prevailing BIR's RMC 46-2013. Consequently, if the PhP16,400.00 CNAI granted to NFA officials and employees exceeds the PhP30,000.00 threshold when added to their 13th month pay, productivity incentives and Christmas bonuses, the excess shall have to be taxed. But, it bears stressing that RMC 46-2013 dated 26 May 2013 may be set aside or reversed by the Secretary of Finance if challenged under the procedure laid down under DOF RMC 44-2001 dated 5 October 2001."

Accordingly, Administrator Orlan A. Calayag requested the Secretary of Finance, in a letter dated January 9, 2013, to review BIR Ruling No. DA-(ECB-023) 642-09 dated November 4, 2009 which held that CNAI qualifies as "other benefits under Section 32 (B) (7) (e) of the Tax Code and possibly render an opinion reversing RMC 46-2013 by excluding CNAI in the definition of "other benefits" under the aforecited provision.

In reply, please be informed that a cardinal rule in statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole and not merely of a particular provision. For taken in the abstract, a word or phrase may easily convey a meaning which is different from the one actually intended. Therefore, Section 32 of the Tax Code should be read together with the last paragraph of the same section since statutes must be construed as a whole. In order to put things in proper perspective, Section 32 of the Tax Code of 1997, as amended provides:

"SECTION 32. Gross Income. —

"xxx xxx xxx

"(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

"(1) Life Insurance. — x x x

"(2) Amount Received by Insured as Return of Premium. — x x x

"(3) Gifts, Bequests, and Devices. — x x x

"(4) Compensation for Inquiries of Sickness. — x x x

"(5) Income Exempt under Treaty. — x x x

"(6) Retirement Benefits, Pensions, Gratuities, etc. — x x x

"(7) Miscellaneous Items. — x x x

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"(a) Income Derived by Foreign Government. — x x x

"(b) Income Derived by the Government or its Political Subdivisions. — x x x

"(c) Prizes and Awards. — x x x

"(d) Prizes and Awards in Sports Competition. — x x x

"(e) 13th Month Pay and Other Benefits. — Gross benefits received by officials and employees of public and private entities: Provided, however, That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (P30,000) which shall cover:

"(i) Benefits received by officials and employees of the national and local government pursuant to Republic Act 6686;

"(ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;

"(iii) Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and

"(iv) Other benefits such as productivity incentives and Christmas bonus: Provided, further, That the ceiling of Thirty thousand pesos (P30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

"(f) GSIS, SSS, Medicare and Other Contributions. — x x x

"(g) Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness. — x x x

"(h) Gains from redemption of Shares in Mutual Fund. — x x x"

It is imperative to note that Subsection B (Exclusion from Gross Income) of Section 32 of the Tax Code particularly enumerates items that shall not be included in gross income and thus, shall be exempt from tax for income tax purposes. Items not included in the

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enumeration in Section 32 (B) are therefore included in the computation of gross income. This is the necessary implication of the well-settled rule in statutory construction, *expressio unius est exclusio alterius* which means that the express mention of one person, thing, or consequences implies the exclusion of all others.

If the line of reasoning of the NFA Legal Affairs Department that "CNAI cannot be considered as 'other benefits' because it is not specifically mentioned in Section 32 (B) (7) (e)" would be followed, then there is no other logical consequence but to include CNAI in the computation of gross income of the employees without the benefit of the P82,000 [1] (then P30,000) threshold as indicated in Section 32 (B) of the Tax Code. The *raison d'etre* is that CNAI would be categorized under any of the enumeration of Section 32 (B) except in Section 32 (B) (7) (e) of the same Code.

Where a statute uses a general word, followed by an enumeration of specific words embraced within the general word merely as examples, the enumeration does not thereby restrict the meaning of the general word, but should include others of the same class although not enumerated therein. The caption of Section 32 (B) (7) (e) (iv) *"Other benefits such as productivity incentives and Christmas bonus. . ."* is not an exclusive enumeration but only provides examples of "other benefits" an employee may receive. Accordingly, under Section 32 (B) (7) (e) (iv) of the Tax Code, "other benefits" include all benefits other than the 13th month pay, such as, the annual Christmas bonus, the 14th month pay, the mid-year productivity incentive bonus, gifts in cash or in kind and other similar benefits and refer to those benefits received by an official or employee for one (1) calendar year, the total amount of which, including the 13th month pay, does not exceed P82,000 (then P30,000).

Thus, the coherent reading of Section 32 (B) (7) (e) is the content of RMC No. 46-2013 which states that —

> *"Clarification*
>
> *The Bureau had occasion to rule in BIR Ruling No. [DA-(ECB-023) 642-09] dated November 4, 2009 that incentives arising from CNA qualify as 'other benefits' under Section 32 (B) (7) (e) of the Tax Code of 1997. The ruling reads in part:*
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> *" . . . A reading of the aforementioned Circular (DBM Circular No. 2006-1 dated February 1, 2006) shows that the CNA incentive qualifies as 'other benefits.' Thus the value of the 'other benefits' when added to the thirteenth month pay must not exceed the threshold of P30,000 (now P82,000) in order that it may be exempt from income tax and consequently from the withholding tax. If the value exceeds P30,000 (now P82,000) ceiling, then the excess of the 'other benefits' and the thirteenth month pay is considered as part of compensation subject to income tax and consequently to the withholding tax."*

Based on the foregoing, the CNA incentive is included in the "other benefits" under

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Section 32 (B) (7) (e) of the Tax Code. It is exempt from income tax and withholding tax provided that, the CNA benefits, when added to the 13th month pay and other benefits, shall not exceed the threshold of P82,000 (then P30,000) [CNA + (13th month pay + other benefits) ≤ P82,000 (then P30,000)]. Any excess in the threshold shall be taxable to the employee, whether rank and file or supervisory.

We trust that the foregoing clarifies the matter.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Republic Act (RA) 10653 increasing the ceiling for "other benefits" from P30,000 to P82,000 took effect on February 14, 2015.

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