November 21, 2016

BIR RULING NO. 401-16

22 (F); 23 (D); 24 (A) (1) (c) of the Tax Code
of 1997 RR 2; BIR Ruling No. 252-11

Punongbayan & Araullo
Unit 603, 6th Floor
Ayala Life-FGU Center, Mindanao Avenue Corner Biliran Road
Cebu Business Park, Cebu City

Attention: *AAA*

_____

_____

Gentlemen :

This refers to your letter dated June 10, 2013, requesting confirmation of your opinion on behalf of your client, Euro-CB (Phils.), Inc., that 1) Euro-CB (Phils.), Inc.'s _____, BBB, is considered a resident alien for Philippine income tax purposes, as defined under Section 22 (F) of the Tax Code, as amended, hence, he is taxable only on income derived from sources within the Philippines; and 2) any dividend that he will receive from Euro-CB (Phils.), Inc. in the future shall be subject to 10% final income tax pursuant to Section 24 (B) (2) of the same code.

Documents submitted disclosed that Euro-CB (Phils.), Inc. (TIN 000-000-000-000), is a domestic corporation registered with the Securities and Exchange Commission (SEC) under SEC Registration No. 158837 on January 11, 1989; that it is engaged to manufacture, produce, fabricate, process, pack, store, assemble, export, distribute, market, sell at wholesale, promote, and otherwise generally trade or deal in and with all kinds of radio, electronic and communication devices, apparatus and parts thereof, particularly but not limited to radio transceivers, scanners, voltage regulators, amplifiers, boosters, antennas, microphones, alarm systems and other related products and their accessories; that BBB (TIN 000-000-000-000), on the other hand, the Euro-CB (Phils.), Inc.'s _____, is a _____ citizen who owns approximately 99.9% of the outstanding shares of stock of Euro-CB (Phils.), Inc. and has been its _____ since its incorporation in 1989; that BBB is married to a Filipina since March 2000 and his family owns and maintains residence

Copyright 2020 CD Technologies Asia, Inc.

in _____; that he is currently residing at _____; and that he is a holder of Special Non-Immigrant 47 (a) (2) VISA with multiple entry privileges.

In reply thereto, please be informed that Section 22 (F) of the Tax Code defines a resident alien as *"an individual whose residence is within the Philippines and who is not a citizen thereof."*

In relation thereto, portion of Sec. 5 of Revenue Regulations No. 2 (Income Tax Regulations) provides as follows, *viz.*:

> *"An alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the Philippines and has no definite intention as to his stay, he is a resident. One who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished is a transient. But if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the Philippines, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned."*

Based on the foregoing, it can be deduced that an alien (or one who is not a citizen of the Philippines) may be considered a resident of the Philippines for income tax purposes if: (1) he or she is not a mere transient or sojourner, (2) he or she has no definite intention as to his stay, or (3) his or her purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his or her home temporarily in the Philippines.

Accordingly, it is clear that BBB acquired residency in the Philippines. There is an intention on his part to stay in the Philippines indefinitely given the fact that: a) he invested in the Philippines and served as Euro-CB (Phils.), Inc.'s _____; b) he acquired real property and is actually present most of the time in the Philippines; and c) he registered as a taxpayer with the BIR. All of these circumstances show that he is not a mere transient or sojourner.

Thus, having acquired residency in the Philippines since 1989, this office holds that BBB is a resident alien and is taxable as a resident alien for Philippine Income Tax purposes for the duration of his stay in the Philippines. Furthermore, Section 6 of the Income Tax Regulations provides:

"SECTION 6. Loss of residence by alien. —

Copyright 2020 CD Technologies Asia, Inc.

An alien who has acquired residence in the Philippines retains his status as a resident until he abandons the same and actually departs from the Philippines. An intention to change his residence does not change his status as a resident alien to that of a nonresident alien. Thus an alien who has acquired a residence in the Philippines is taxable as a resident for the remainder of his stay in the Philippines."

As a resident alien individual, BBB is subject to income tax in the same manner as a Filipino citizen, as provided in Section 24 in relation to Section 23 (D) of the Tax Code. He can also avail of the personal tax deductions and tax exemptions allowed to Filipino citizens under Sections 34 and 35 of the Tax Code, respectively. (BIR Ruling No. 252-11 dated July 26, 2011)

However, as to the request that the future issuance of cash dividend that BBB will receive from Euro-CB (Phils.), Inc. be subject to 10% final income tax pursuant to Section 24 (B) (2) of the Tax Code, as amended, this Office cannot rule on the same, it being a hypothetical issue, and thus, a no ruling area under Revenue Bulletin No. 1-2003.

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

Very truly yours,

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

Copyright 2020 CD Technologies Asia, Inc.