May 11, 2018

BIR RULING NO. 813-18

Section 25 (C) of the National Internal
Revenue Code of 1997, as amended;
Revenue Regulations (RR) No. 11-2010;
Revenue Memorandum Circular (RMC)
No. 82-2010

Hyder Consulting Middle East Limited
Manila Regional Operating Headquarters
Level 9, Tower 2, The Enterprise Center
6766 Ayala Avenue corner Paseo de Roxas,
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated 16 April 2012 requesting for a clarificatory ruling on some provisions of Revenue Regulations (RR) No. 11-2010 as a response to a letter of your employee requesting adjustment and refund of the excess of his income tax withheld for the year 2011.

It is represented that Hyder Consulting Middle East Limited ("Hyder" for brevity) is a registered Regional Operating Headquarter covered with the implementation of RR No. 11-2010; that one of its employees, BBB, _____, receives a fixed annual income of P_____, exclusive of performance bonus, overtime pay and other bonus which he may receive during the year as reflected in his employment contract; that for the taxable year 2011, the said employee's compensation income was taxed under the regular income tax rate; that the said employee received supplementary income such as overtime pay, performance bonus, long service award and Christmas bonus with a total amount of P_____; that the total taxable income of the subject employee for the year 2011 is P_____ as reflected in his BIR Form 2316; that in a letter dated 29 March 2012, the subject employee requested to avail the fifteen percent (15%) preferential income tax rate for qualified Filipino personnel employed by Regional Operating Headquarters of multinational companies pursuant to RR No. 11-2010, his compensation being more than the threshold amount of P975,000.00.

On the basis of the foregoing representations, you now request for clarifications of

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the following:

1. Whether the supplementary compensation income which is determinable only at the end of the taxable year should be included in determining the compensation income threshold under Section 3 (b) of RR No. 11-2010;

2. Whether Example 1 to 12 cited on the said regulation, are intended for transitory purposes only for affected RHQ's of multinational companies for the taxable year 2010, or as guidelines to be observed every taxable year; and

3. Whether the adjustments on the applicable tax rate of your Filipino employees should be conducted every filing of tax returns for the month of December when all other supplementary income outlined in the employment contract are actually received and in order to determine if the employee qualifies under the Compensation Threshold.

In reply, please be informed that Section 4 and the first paragraph of Section 5 of RR No. 11-2010 clarify the terms Gross Compensation which states:

"SECTION 4. Gross Compensation. — Under Section 2.78.1 (A) of RR No. 2-98, as amended, gross compensation includes salaries, wages, emoluments and honoraria, allowances, commissions and fees (including director's fees if the director is at the same time an employee of the employer), taxable bonuses, and fringe benefits (except those that are subject to fringe benefits tax).

Section 2.79 (B) (3) of RR No. 2-98, as amended, categorizes taxable compensation income into regular taxable compensation income and supplementary compensation income. Under the said regulations, regular taxable compensation income includes basic salary, fixed allowances for representation, transportation and other allowances paid to an employee per payroll period. Supplementary compensation is defined by the same regulations as payments made to an employee in addition to the regular compensation such as commission, overtime pay, taxable bonus and other taxable benefits, with or without regard to a payroll period.

For purposes of determining the compensation threshold under Section 3 (b) of these regulations, gross compensation shall not include retirement and/or separation pay/benefits (whether or not taxable), as well as items considered as de minimis benefits. Provided that the foregoing shall be considered in determining the income tax due at the time of the employee's retirement or separation.

SECTION 5. Manner of Compensation of Tax. — At the start of the year or at the start of the employee's employment, as the case may be, it is important to determine whether the employee shall receive, or is due to receive under a contract of employment, a gross annual compensation equivalent to or above the compensation threshold stated in Section 3 (b) of these regulations. The

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determination should, as far as practicable, included both regular taxable compensation income and supplementary compensation income." (Underscoring supplied.)

Based on the above quoted provisions, for purposes of determining the compensation threshold under Section 3 (b) of these regulations, gross compensation should include both regular taxable compensation income and supplementary compensation income. Therefore, the overtime pays, performance bonus, long service award and Christmas bonus received by BBB should be added to his regular compensation income to determine his gross annual compensation income.

Please take note however, that Section 7 of RR 11-2010 provides that:

"SECTION 7. Reporting Requirements. — For a Filipino managerial or technical employee to have the option to be taxed at fifteen percent (15%) of his or her gross income, it shall no longer be necessary for the RHQ or ROHQ to file a request for ruling with the BIR National Office. Instead, the RHQ or ROHQ must file the following documents with the Revenue District Office having jurisdiction over it or, for ROHQs or RHQs that are considered large taxpayers, with the LT Assistance Division/LT Regulatory Division/LTDOs:

a. ***Declaration of Employees' Availment of the 15% Preferential Tax Rate of every qualified employee (BIR Form No. 1947*** *herein attached as Annex "A")*

Declaration of Employees' Availment of the 15% Preferential Tax Rate shall be filed within 15 days from the date of effectivity of this Revenue Regulations, for employees currently employed with ROHQ or RHQ or within 15 days from the date of employment for those who will just be employed. ***Therefore, the filing shall only be made whenever there are changes in the employment status of the employee (i.e., change of employer, change in salary package, promotion) in which case the newly accomplished BIR Form must be submitted not later than January 31st of the succeeding year****."* (Emphasis and underscoring supplied)

In relation thereto, Revenue Memorandum Circular (RMC) No. 82-2010 provides that:

"Q5: What is the effect of non-filing of BIR Form No. 1947?

A5:

xxx xxx xxx

b. For subsequent years after the initial implementation of RR 11-2010:

When a qualified manager or technical employee ***failed to timely*** *file a declaration of availment of the fifteen percent (15%) preferential income tax rate in any taxable calendar year where he qualifies either by virtues of*

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employment into an RHQ or ROHQ, increase in salary or promotion, ***he is deemed to have opted to be taxed at the regular income tax rate under Sec. 24 of the Tax Code, as amended, and thus, will be covered by the rules on regular withholding on compensation for his compensation covering that calendar year****.*

However, the said qualified managerial or technical employee may still exercise the option to be taxed at fifteen percent (15%) preferential income tax rate for the succeeding calendar year by filing duly accomplished BIR Form No. 1947 on or before January 31 of the succeeding year." (Emphasis and underscoring supplied)

In view of the foregoing, since BBB requested only on March 29, 2012 (deadline for year end 2011 is on or before January 31, 2012), he is deemed to have already opted to be taxed at the regular income tax rate covering that calendar year. Thus, he is not entitled to a refund.

Moreover, RR No. 11-2010 is the implementing rule of Section 25 (C) of the National Internal Revenue Code of 1997, as amended. It serves as a guideline on the availment of the fifteen percent (15%) preferential income tax rate for qualified Filipino personnel employed by Regional Operating Headquarters of Multinational Companies. Thus, all revenue officials, employees and others concerned are mandated to be guided by this regulation when confronted with issues concerning the subject matter thereof.

For further guidance of its users, the subject regulation enumerates certain situations with the application on manner of computing the fifteen percent (15%) preferential income tax rate, including the other reportorial requirements. Accordingly, it is imperative that when confronted with situation that squarely fits into what is described therein, the same should be strictly followed.

Likewise, it should be noted that the transitory provision is provided under the Section 9 of RR No. 11-2010 which specifically covers compensation payments made from January 1, 2010. Therefore, it is clear that the guidelines as enunciated in the example under Section 5 of the said regulations are intended to be observed every taxable year.

This ruling is being issued on the basis on 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

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