

## TAX-TRIGGERED WALK-OUTS

by Atty. Rainer P. Dela Fuente, CPA / December 2014

Last July 10, employees of the Sandiganbayan staged a mass walk-out to denounce the government's move to tax their perks and allowances. To them, these benefits are just a way of helping them 'get by' on their meager salaries and should therefore be spared from taxation. The same sentiment is also being echoed by other government employees at the backdrop of recently-released Revenue Memorandum Order (RMO) No. 23-2014 from the Bureau of Internal Revenue (BIR) which seeks to reiterate the taxability of all benefits received both by private and government employees. Evidently, the uproar against this BIR 'information drive' is more resounding in the government sector based on the notion that their take-home pay is considerably lower than that of their private sector counterparts.

Under RMO 23-2014, compensation, allowances, bonuses, honoraria and benefits received by officials and employees working in the Judicial, Legislative and Executive branches of the government, as well as those working in constitutional bodies, are subject to withholding tax on compensation. It further clarified the above rule by enumerating the benefits received, whether regularly or occasionally, by government employees that are subject to withholding tax on compensation. As a result, only the following items are exempt from said withholding tax:

1. Thirteenth-month pay and other benefits not exceeding P30,000.00, paid or accrued during the year;
2. De minimis benefits;
3. Fringe benefits, which are subject to the fringe benefit tax;
4. Representation And Transportation Allowance (RATA);
5. Personnel and Economic Relief Allowance (PERA);
6. Monetized value of leave credits;
7. Mandatory GSIS, Medicare and Pag-IBIG contributions;
8. Union dues of individual employees;
9. Compensation income of employees in the public sector, with compensation income of not more than the statutory minimum wage;

10. Holiday pay, overtime pay, night-shift differential pay and hazard pay received by minimum wage earners;
11. Benefits received from the GSIS Act of 1937, as amended, and the retirement gratuity/benefits received by government officials and employees under pertinent retirement laws; and
12. All other benefits that are exempted by law, as confirmed by BIR.

Again, this RMO does not impose a new or additional tax. Rather, it is simply a reiteration of an old and existing rule on withholding of compensation income where “other benefits” (in whatever form paid and no matter how called) exceeding P30,000.00 are taxable.

In the event that these benefits are not subjected to withholding taxes, corresponding penalties shall be imposed on the government official responsible for the non-withholding of tax and/or non-remittance of taxes withheld. Thus, the following will bear the consequences resulting from failing to comply with the withholding/remittance requirement:

- a. For LGUs, the chief executives, chief accountants and treasurers; and
- b. For GOCCs and other government offices, the chief accountant and the head of the office or the official holding the highest position.

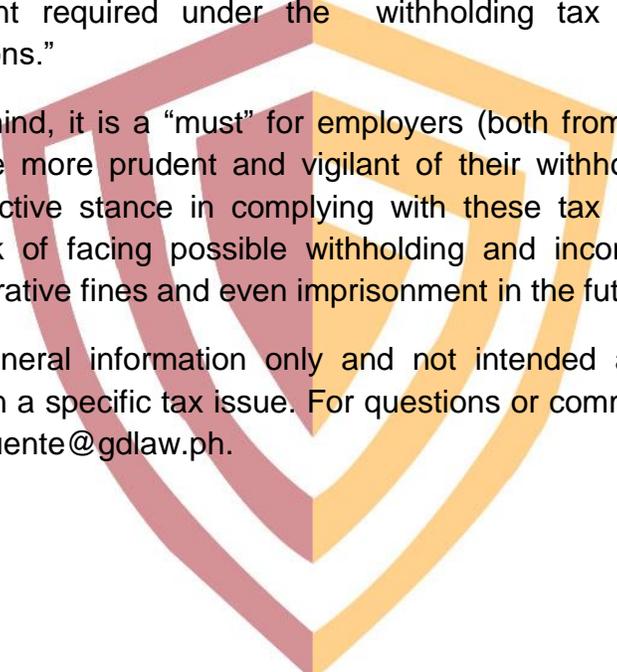
Should the employer fail to withhold the correct amount of tax, the employee will not be entitled to the substituted filing for which the latter will be required to personally prepare his or her income tax return and pay the corresponding taxes. In addition, the employer as the accountable withholding agent, will be penalized as follows:

1. For failure to collect and remit taxes. - be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.
2. For failure to file return, supply correct and accurate information, pay tax withhold and remit tax and refund excess taxes withheld on compensation. - be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
3. Violation of Withholding Tax Provisions. – fine of not less than Five thousand pesos (P5,000) but not more than Fifty thousand pesos (P50,000) or suffer imprisonment of not less than six (6) months and one (1) day but not more than two (2) years, or both.

- i. Failing or causing the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing rules and regulations; or
- ii. Failing or causing the failure to remit taxes deducted and withheld within the time prescribed by law, and implementing rules and regulations; or
- iii. Failing or causing the failure to file return or statement within the time prescribed, or rendering or furnishing a false or fraudulent return or statement required under the withholding tax laws and rules and regulations.”

With all of these in mind, it is a “must” for employers (both from the government and private sectors) to be more prudent and vigilant of their withholding tax obligations. Taking a more pro-active stance in complying with these tax obligations is nothing compared to the risk of facing possible withholding and income tax assessments, imposition of administrative fines and even imprisonment in the future.

This article is for general information only and not intended as a substitute for a professional advice on a specific tax issue. For questions or comments, the author may be reached via [rdelafuente@gdlaw.ph](mailto:rdelafuente@gdlaw.ph).



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