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TMAP'S REACTION TO THE SC DECISION DIRECTING THE DOF AND THE BIR TO REFUND THE OVERPAID INCOME TAX BY MINIMUM WAGE EARNERS (MWEs) AND INDIVIDUAL TAXPAYERS ARISING FROM THE ERRONEOUS IMPLEMENTATION OF REPUBLIC ACT NO. 9504.

The Tax Management Association of the Philippines (TMAP) is pleased with the landmark Decision of the Supreme Court En Banc promulgated on 24 January 2017 declaring as NULL AND VOID Revenue Regulation (RR) No. 10-2008 insofar as it:

(a) disqualifies MWEs who earn purely compensation income from the privilege of the MWE exemption in case they receive bonuses and other compensation related benefits exceeding Php30,000; and

(b) provides for (i) the prorated application of the personal and additional exemptions under Rep. Act 9504 for the taxable year 2008, and (ii) the period of applicability of the MWE exemption to begin only on 6 July 2008 (the "Decision").

The Decision is a clear signal that the Supreme Court will always uphold legislative intent and strike down a regulation that goes beyond enforcement of the law. At the same time, the Decision also serves as a reminder to those tasked to implement tax laws that tax laws should be implemented in a manner that is fair and consistent with the letter and spirit of the law. Revenue issuances that are contrary to law aimed solely at increasing tax collections have no place in a democracy. Our Supreme Court can be relied upon to protect the taxpayers from administrative legislation.

The Decision affects practically all individual taxpayers in taxable year 2008. As such, the execution of the Decision can pose a challenge.

Thus, TMAP appeals to the DOF and the BIR to accept and implement the Decision in earnest and, to this end, promulgate the necessary reasonable revenue issuance.

Notably, the Decision directs that the Secretary of Finance and the Commissioner of Internal Revenue to *"allow the application of the refund by way of withholding tax adjustments"*. Accordingly, TMAP believes that under the Decision, the DOF and the BIR are enjoined:

(1) to allow the withholding agents to (i) refund the overpaid tax to the affected employees or their heirs and (ii) automatically deduct any amount refunded from the current withholding tax due; and

(2) to act with dispatch in processing claims for refund of self-employed individuals.

We are in this predicament because the Government failed to implement the tax relief accorded by Rep. Act 9504 to MWEs and individuals. TMAP hopes that the present Government will not raise technicalities to thwart anew the benefits granted to taxpayers by law in 2008.

TMAP willingly offers to assist the BIR in whatever way it can to ensure the immediate and smooth implementation of the Decision.

TMAP also wants to highlight the fact that the Supreme Court recognizes the urgency of adjusting the personal income tax brackets when it said:

"...We stress that the progressivity of the rate structure under the present Tax Code has lost its strength. In the main, it has not been updated since its revision in 1997, or for a period of almost 20 years. The phenomenon of 'bracket creep' could be prevented through the inclusion of an indexation provision, in which the graduated tax rates are adjusted periodically without need of amending the tax law. ... It should be emphasized that indexation to inflation is now a standard feature of a modern tax code."

The Decision acts as strong endorsement of tax reform. With this, TMAP once again expresses its support to the DOF as it pushes for tax reform measures that will alleviate the plight of individual taxpayers while making the tax system fairer, simpler and more equitable.