REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 22(E)(3) & 23(B) of the 1997 Tax Code; RR No. 1-79
BIR Ruling No. 116-12
#305-2016

6-28-2016

HON. ALICIA R. BALA
Undersecretary
Department of Social Welfare and Development
IBP Road, Batasan Pambansa Complex
Constitution Hills, Quezon City

Dear Usec. Bala,

This refers to your letter dated October 5, 2015 requesting for Certificate of Tax Exemption on your salaries received during the period of your secondment, from September 8, 2012 to September 7, 2015, in the Association of Southeast Asian Nations (ASEAN) Secretariat as Deputy Secretary General in Jakarta, Indonesia.

Based on the documents submitted, it is shown that Usec. Bala is an employee of the Department of Social Welfare and Development (DSWD) when she was appointed for the post of Deputy Secretary General for the ASEAN Secretariat; that based on the Memorandum of Agreement dated August 31, 2012 executed between the DSWD and the ASEAN Secretariat, Usec. Bala continued to be an employee of DSWD during her secondment in the ASEAN Secretariat but she was considered on leave without pay in DSWD during the said period; that the remunerations and other benefits due to Usec. Bala were shouldered by the ASEAN Secretariat as provided in the ASEAN Letter of Appointment dated August 13, 2012; and that based on the ASEAN Letter of Appointment, the official duty station of Usec. Bala during the period of secondment was Jakarta, Indonesia.

In reply thereto, Section 22 (E) of the NIRC provides:

> *"Sec. 22. Definitions. — When used in this Title:*
>
> *xxx xxx xxx*
>
> *(E) The term 'nonresident citizen' means:*
>
> *(1) A citizen of the Philippines who establishes to the satisfaction of the Commissioner the fact of his physical presence abroad with a definite intention to reside therein.*
>
> *(2) A citizen of the Philippines who leaves the Philippines during the taxable year to reside abroad, either as an immigrant or for employment on a permanent basis.*

042477

(3) A citizen of the Philippines who works and derives income from abroad and whose employment thereat requires him to be physically present abroad most of the time during the taxable year.

(4) A citizen who has been previously considered as nonresident citizen and who arrives in the Philippines at any time during the taxable year to reside permanently in the Philippines shall likewise be treated as a nonresident citizen for the taxable year in which he arrives in the Philippines with respect to his income derived from sources abroad until the date of his arrival in the Philippines.

xxx xxx xxx" (Emphasis supplied)

Prior to the foregoing provision defining a non-resident citizen, Section 2 of Revenue Regulations No. 01-79 dated January 8, 1979 enumerated those who are considered as non-resident citizens, to wit:

"SEC. 2. Who are considered as non-resident citizens. —

The term "non-resident citizen" means one who establishes to the satisfaction of the Commissioner of Internal Revenue the fact of his physical presence abroad with the definite intention to reside therein and shall include any Filipino who leaves the country during the taxable year as:

(a) Immigrant — one who leaves the Philippines to reside abroad as an immigrant for which a foreign visa as such has been secured.

(b) Permanent employee — one who leaves the Philippines to reside abroad for employment on a more or less permanent basis.

(c) Contract worker — one who leaves the Philippines on account of a contract of employment which is renewed from time to time within or during the taxable year under such circumstances as to require him to be physically present abroad most of the time during the taxable year. To be considered physically present abroad most of the time during the taxable year, a contract worker must have been outside the Philippines for not less than 183 days during such taxable year."

Apparently, the current Section 22 (E) (3) was derived from the above-defined 'contract worker'. Stated otherwise, to be a non-resident citizen, one must leave on account of a contract of employment under such circumstances that require him to be physically present abroad most of the time. The phrase "most of the time" was construed to mean a period more than 183 days during the taxable year. This is aligned with the present provision of the Tax Code of 1997 that describes the non-resident citizen as a Philippine citizen who "works and derives income from abroad and whose employment thereat requires him to be physically present abroad most of the time". (BIR Ruling No. 116-12 dated February 22, 2012)

042477

Even though the salary of Usec. Bala was shouldered by the Receiving Agency (ASEAN Secretariat), her assignment/appointment was only on secondment status (temporary) thru Memorandum of Agreement between the Mother Agency (DSWD) and the Receiving Agency. Further, it was stated in the Memorandum of Agreement that while on secondment, the continuity of her employment service shall not be affected and the mother agency shall continue to pay her government mandatory contributions (GSIS premiums, Pag-IBIG Fund, PHILHEALTH) for the duration of the secondment. Thus, Usec. Bala remained to be an employee of the DSWD during the period of secondment and, at the time, she did not have any intention to reside at Jakarta, Indonesia either as immigrant or on a permanent basis to make her a non-resident citizen under Section 22(E) of the Tax Code of 1997, as amended.

In view of the foregoing and based on the circumstances of Usec. Bala's employment, she cannot be qualified as "non-resident citizen" under Section 22 (E) (3) of the Tax Code of 1997.

Accordingly, Usec. Bala is still considered a resident citizen during the period of her secondment in the ASEAN Secretariat, in which case, she is taxable on all income derived from within and without the Philippines, including her salaries received from ASEAN Secretariat during the period of secondment from September 8, 2012 to September 7, 2015. Hence, Usec. Bala must file income tax returns for said periods and pay the corresponding tax due thereon.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

042477
JUN 2 7 2016

K-1