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TAX LAW FOR BUSINESS

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Revisiting the local tax on holding companies

Holding companies are plainly not subject to local business tax due to the parameters specified in our local tax code. As early as 2015, our Court of Tax Appeals (Court) en banc seem settled already as to the nontaxability of dividends and interests income earned by a holding company. As this becomes the local taxation regime for holding companies, it is worthy to examine the progressing justification and opposition contained in our jurisprudence.

In the mother of all cases (Michigan case dated June 17, 2015), the Court held that a holding company is not of the same class as that of a bank or other financial institutions. To tax, therefore, a holding company on its dividend income is a deliberate intent to circumvent the prohibition set in our local tax code wherein the taxing powers of our local government units shall not extend to the levy of income tax, except on banks and other financial institutions. In this case, the bone of contention of the opposition hinges on the fact that the legal basis of the assessment (i.e., the ordinance) had not been declared illegal and is thus presumed valid. Apparently, such contrary argument falls short of convincing the majority of the magistrates to rule otherwise.

In subsequent cases decided by the Court in division, the opposition placed more emphasis on the notion that a holding company is actually operating as a financial intermediary. As such, in some cases, the Court held that a holding company can actually be considered a nonbank financial intermediary (NBFI) and thereby subject to local business tax on its dividend and interest income.

Recently, however, the Court en banc had the occasion to reexamine the local taxation of holding companies in the cases of *Te Deum* (May 8, 2018) and *ASC Investors* (May 17, 2018). In both of these cases, the majority of the magistrates adopted the Michigan ruling and expounded its reasoning in order to squarely address the evolving oppositions.

In concluding that the taxpayers are not NBFI but a holding company not subject to local business tax, the Court consolidated a number of laws and regulations in order to delineate the distinction of a holding company from a financial intermediary. Thereafter, it came up with three basic requirements for a person or entity to be considered an NBFI. First, the person or entity is authorized by the Bangko Sentral ng Pilipinas to perform quasi-banking activities. Second, the principal functions of the said person or entity include the lending, investing or placement of funds. Third, the person or entity must perform quasi-banking functions on a regular and recurring, not on an isolated basis.

The general guideline, therefore, is that an NBFI may not be considered as such in its legal sense unless it possesses all the requirements that qualify it to fall within its legal definition. To date, the above-highlighted doctrine is still controlling, valid and effective pending any contrary resolution or decision from the Supreme Court.

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