REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 32 (B)(6)(a), NIRC
BIR Ruling No. 1336-18
OT- 0600 -2020
OCT 20 2020

Miravite Consulting Group
20th Floor Fort Legend Tower
3rd Avenue cor. 31st St., Bonifacio Global City
Taguig City 1634

Attention: **<u>Ms. Mary Ann Tulagan</u>**
Benefits Administration Services

Gentlemen:

This refers to your letter dated October 11, 2018 requesting for legal opinion on whether an employee will still be able to claim tax exemption despite not being eligible for early retirement under the retirement plan of the company.

It is represented that your client's retirement plan states that the early retirement eligibility requirement is at least fifteen (15) years of service and employee is fifty (50) years old. On the other hand, the Bureau of Internal Revenue (BIR) Certification granted that employee must have rendered ten (10) years of service to the company; and be at least fifty (50) years of age at the time of retirement.

In reply, please be informed that Section 32 (B)(6)(a) of the Tax Code of 1997, as amended, provides, viz.:

> *"(a) Retirement benefits received under R.A. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, that the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: . . ., shall not be included in gross income and shall be exempt from taxation."*

Accordingly, retirement benefits received under Republic Act (R.A.) No. 7641 shall not be included in gross income and shall be exempt from income tax effective January 1, 1998. On the other hand, the retirement benefits to be received by private sector employees

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under Section 32 (B)(6)(a) of the Tax Code of 1997, as amended, are exempt from income tax provided that their employers maintain a qualified retirement benefit plan duly approved by the Bureau of Internal Revenue.

Section 1 of R.A. No. 7641, otherwise known as an "Act Amending Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, by Providing for Retirement Pay to Qualified Private Sector Employees in the Absence of any Retirement Plan in the Establishment" provides, viz.:

> *"Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:*
>
> > *Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.*
> >
> > *In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement under any collective bargaining and other agreements shall not be less than those provided herein.*
> >
> > *In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) which is declared the compulsory retirement age, who has served at least five (5) years in the establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year."*

Based on the foregoing, R.A. No. 7641 will apply only in the absence of any retirement plan, collective bargaining agreement or other applicable employment contract in the establishment. Under the said Act, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) which is declared the compulsory retirement age, who has served at least five (5) years in the service of the employer, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.

Under Section 32 (B)(6)(a) of the Tax Code of 1997, as amended, the employee must have rendered ten (10) years of service to the company; and be at least fifty (50) years of age at the time of retirement, otherwise the retirement benefits to be paid to him shall be subject to income tax and consequently to withholding tax.

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Considering that your client maintains a "reasonable private benefit plan" duly approved by the Bureau of Internal Revenue, the provisions thereof shall apply. Under your client's retirement plan, the early retirement eligibility requirement is at least fifteen (15) years of service and employee is fifty (50) years old. Applying the provisions of the aforesaid plan, an employee who is not at least fifty (50) years of age and has rendered less than fifteen (15) years of service is not qualified for early retirement hence, the benefits to be received by the said employee, if any, shall be subject to income tax and consequently to the withholding tax.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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