REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec 32 (B) (6) (a) NIRC
BIR Ruling No. 442-2012
#371-2017 8-9-2017

LUNAR STEEL CORPORATION
259 C. Raymundo Ave., Maybunga
Pasig City

Attention: **Ramon D. Tan**
Plant Manager

Gentlemen:

This refers to your letter dated October 2, 2015, requesting, on behalf of the employees of Lunar Steel Corporation, for exemption from income tax, and consequently from withholding tax, on the employees' retirement benefits received pursuant to a Collective Bargaining Agreement (CBA) entered into between Lunar Steel Corporation and Lunar Steel Corp. Workers Union-AWATU (the "**Union**").

In reply, please be informed that Section 1 of Republic Act (R.A.) No. 7641, amending the Labor Code of the Philippines, provides:

> *"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. — <u>Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.</u>*
>
> *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) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said 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 whole year."* (Underscoring supplied)

The aforesaid provision allows the retirement of an employee upon reaching the retirement age as may be provided under the applicable CBA or other employment contract entered into by and between the employer and the employees of the company, and the parties to the CBA or contract may agree on the retirement benefits that will be received by the employees provided that such benefits shall not be less than those provided under the Labor Code of the Philippines. In the absence of a retirement plan or other agreement providing for the retirement benefits of employees in the establishment, the retirement benefits as set forth under the aforequoted provision shall apply, i.e. at least one-half (1/2) month salary for every year of service of an employee who has reached the age of sixty (60) years or more, but not beyond sixty-five (65) years, and rendered at least five (5) years of service in the company.

Considering that there is a CBA existing between Lunar Steel Corporation and the Union, the provisions of the said CBA shall apply in so far as the employees' retirement benefits are concerned. Article XIX of the CBA provides, to wit:

> <u>*"RETIREMENT PAY AND SEPARATION PAY*</u>
>
> *A. RETIREMENT PAY PLUS INCENTIVES*
>
> *1. 60 years old or 25 years Service in the company - 22.5 days per year of service*
>
> *Plus an incentive of 7.5 days per year of service*
>
> *2. 60 years old or 20 years Service in the company - 22.5 days per year of service*
>
> *xxx xxx xxx"*

On the taxability of the above retirement benefits, Section 32 (B) (6) (a) of the Tax Code of 1997, as amended, states, thus:

> *"Section 32. Gross Income.-*
>
> *(B) Exclusions from Gross Income.-The following items shall not be included in gross income and shall be exempt from taxation under this Title:*
>
> *xxx xxx xxx*
>
> *(6) Retirement Benefits, Pensions, Gratuities, etc.-*
>
> *(a) <u>Retirement benefits received</u> under R.A. 7641 and those received by officials and employees of private firms, whether individual or corporate, <u>in accordance with a reasonable private benefit plan maintained by the employer</u>: <u>Provided, that the retiring</u>*

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> *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."* (underscoring supplied)

Section 32(B)(6)(a) of the Tax Code of 1997, as amended, requires the presence of two conditions in order that the employee benefits received pursuant to a CBA may be granted tax exemption, *viz*: (1) the employee had been in the service of the same private firm for at least ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement. It is noted that under Article XIX of the CBA, an employee is entitled to retirement pay upon reaching the age of sixty (60) or after rendition of twenty (20) or twenty-five (25) years of service in the company. In such cases, the retirement benefits received under Article XIX of the CBA shall only be exempt from income tax if the two conditions provided under Section 32(B)(6)(a) of the Tax Code of 1997, as amended, are both present, to wit: (1) the employee had been in the service of Lunar Steel Corporation for at least ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement.

Moreover, pursuant to Section 2.78.1 (A)(7) of RR 2-98, as amended, the terminal pay, *i.e.*, commutation and payment of monetized unused vacation leave credits not exceeding ten (10) days during the year are not subject to income tax and consequently to the withholding tax. Conversely, the cash equivalent of vacation leave exceeding ten (10) days is subject to tax. However, this same principle cannot apply to sick leave credits since an employee must actually go on sick leave to be able to avail of said leave credits. (*BIR Ruling No. 442-2012* dated July 3, 2012)

It is must be understood that the payment to the retiring employees of their salaries, except if minimum wage earners, and the payment of the 13th month pay and other benefits in excess of the Php P82,000.00[1] threshold shall be subject to income tax, and consequently to withholding tax, under Section 2.78.1 (A)(3)(a) and (A)(7) of RR 2-98, as amended. (*BIR Ruling No. 442-2012* dated July 3, 2012)

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] Revenue Regulations No. 3-2015 dated March 13, 2015