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

Sec. 32(B)(6)(a) of the Tax Code of 1997, as amended
BIR Ruling No. 1151-2018; BIR Ruling No. 231-2016
OT- 361-2022
AUG 12 2022

PHILIPPINE STOCK EXCHANGE CENTER
CONDOMINIUM CORPORATION EMPLOYEES UNION
TUCP Compound, Eliptical Road cor. Maharlika Street
Diliman, Quezon City

Attention: **Mr. George G. Pataray**
President

Gentlemen:

This refers to your request on behalf of Philippine Stock Exchange Center Condominium Corporation Employees Union (referred herein as "PSECCCEU" or "the Union") for legal opinion on the non-taxability of retirement benefits embodied in its Collective Bargaining Agreement (CBA) with Philippine Stock Exchange Center Condominium Corporation (referred herein as "PSECCC" or "the Employer").

It is represented that PSECCCEU has a CBA with PSECCC since August 4, 2004. Recently, the Union and the Employer entered into a new CBA. All of the existing CBAs, including the most recent, are consistent in granting retirement benefits to the Union members in the language as follows:

"Article XXV
RETIREMENT

In case an employee applies for optional retirement under the law (for those who are 60 but less than 65 years old) but the said application is denied/disapproved by CONDOMINIUM and is later on terminated from employment due to redundancy, the separation package shall be that of optional retirement or redundancy, whichever is higher."

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

"SEC. 32. Gross Income. –

xxx xxx xxx

(B) Exclusion 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. –

xxx xxx xxx

> *(a) Retirement benefits received under Republic Act No. 7641 and those received by official 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: Provided further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purpose of this subsection, the term* ***'reasonable private benefit plan'*** *means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees."*

Based on the above-quoted provision, if the company maintains a private retirement plan which have been determined by the Bureau of Internal Revenue ("the Bureau") as a "reasonable retirement benefit plan," the retirement benefits that will be received by the employees shall be exempt from income tax, provided that the two (2) conditions are met, *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.

However, even if the company maintains a retirement plan but was not approved by this Bureau as a "reasonable retirement benefit plan," the provisions of the Labor Code, as amended, shall apply.

Article 287 of the Labor Code, as amended, provides for the rules on retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment, *viz*:

> *"Article 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 benefits under any collective bargaining and other agreements shall not be less than those provided therein.*

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.

xxx xxx xxx"
(Emphasis supplied)

From the quoted provision, in the absence of PSECCCEU's approved reasonable retirement plan, the retirement benefits that will be received by the employees shall be exempt from income tax, provided the following conditions are met: *First,* the employee had been in the service for at least five (5) years; and *Lastly,* the employee is at least sixty (60) years old but not beyond sixty-five (65) years old at the time of retirement.

In the instant case, considering that the provision on retirement embodied in PSECCCEU's CBA was not determined or approved by the Bureau as a "reasonable retirement benefit plan," the requirements under the Labor Code, as amended, shall be applied in order that the benefits received may be granted tax exemption. Thus, the retirement benefits to be received by Union members who shall avail of the optional retirement shall only be exempt from income tax provided the two (2) conditions are satisfied, viz: (1) the employee had been in the service for at least five (5) years; and (2) he is at least sixty (60) years old but not beyond sixty-five (65) years old at the time of retirement, pursuant to Section 32(B)(6)(a) of the Tax Code of 1997, as amended, in relation to Section 1 of Republic Act (RA) No. 7641, amending the Labor Code of the Philippines

It is noted however, that if the application of a Union member for optional retirement be denied/disapproved and is later on be terminated from employment due to redundancy, the separation benefits may be exempt from income tax. Pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, as amended, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or <u>for any cause beyond the control of the said official or employee</u> shall not be included in the gross income and shall be exempt from taxation under Title II of the same Tax Code. This is without prejudice however, for compliance with existing rules and regulations of the Department of Labor and Employment (DOLE) on separation and Revenue Memorandum Order (RMO) No. 66-2016[1] dated December 6, 2016.

Section 32 (B) (6) (b) of the Tax Code of 1997, as amended, requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely: (1) the employee is separated from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee, and (2) the employer pays benefits to the official or employee or his heirs as a consequence of such separation.

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[1] Amending Pertinent Provisions of Revenue Memorandum Order (RMO) No. 26-2011, Prescribing the Guidelines in the Tax Treatment of Separation Benefits Received by Officials and Employees on Account of Their Separation from Employment Due to Death, Sickness or Other Physical Disability and the Issuance of Certificate of Tax Exemption from Income Tax and from the Withholding Tax.

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Furthermore, it is worth noting that pursuant to Section 2.78.1 (A) (7) of Revenue Regulations (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.[2]

Finally, it must be also understood that the payment to the retiring employees of their 13th month pay and other benefits in excess of the ₱90,000.00 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 No. 2-98, as amended.[3]

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,

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

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[2] BIR Ruling No. 231-2016 dated June 1, 2016
[3] *Ibid*