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

Republic Act No. 7641;
Republic Act No. 4917;
Section 32 (B) (6) (a) of the NIRC of 1997; as amended;
BIR Ruling No. 231-2016;
BIR Ruling No. 1151-18.

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MANUEL HINOLAN
22 Loja St., Phase 7
Vista Verde Executive Village, Imelda Ave.
Cainta, Rizal, Philippines

Sir:

This refers to your letter dated January 6, 2020 requesting for clarification on whether or not the retirement benefits that you will receive from Flour Daniel, Inc. - Philippines are exempted from tax. It is represented that you have been a regular employee of Flour Daniel, Inc. - Philippines since January 5, 2012 and that you are to retire from said employment by January 2020. Further, it is your opinion that Republic Act (RA) No. 7641 has superseded RA No. 4917 thus, effectively decreasing the required years of service of the employee to avail of the aforesaid tax exemption from ten (10) years to five (5) years.

We reply as follows:

RA No. 4917 entitled, *"An Act Providing that Retirement Benefits of Employees of Private Firms Shall Not Be Subject to Attachment, Levy, Execution, or Any Tax Whatsoever"*, provides that retirement benefits of employees of private firms shall not be subject to any tax when the employer has a "reasonable retirement benefit plan", and 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, to wit:

> *Section 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, garnishment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action:* ***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 years of age at the time of his retirement:*** *Provided, further, That the benefits granted under this Act shall be availed of by an official or employee only once: Provided, finally, That in case of separation of an official or employee 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, any amount received by him or by his heirs from the employer as a consequence of such separation shall likewise be exempt as hereinabove provided. (Emphasis supplied)*

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On the other hand, RA No. 7641 entitled, *"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"*, states:

> *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. – 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 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. (Emphasis supplied)*

Further, please be informed that Section 32(B)(6)(a) of the National Internal Revenue Code of 1997, as amended, states that:

> *"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) 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." (Emphasis supplied)*

Based on the above, if the company maintains a private retirement plan which has been determined by the Bureau of Internal Revenue (BIR) 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, if the company does not maintain a retirement

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plan approved by the BIR as a "reasonable retirement benefit plan," the provisions of RA No. 7641 shall apply.

Considering that Fluor Daniel Philippines, Inc. - Philippines has a reasonable retirement benefit plan with Certificate of Tax Exemption No. 049-2019 as determined by the BIR, the retirement benefits you are to receive from Fluor Daniel Philippines, Inc. – Philippines are not exempt from tax since you have failed to meet the requirement of having been employed in said company for at least ten (10) years.

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

Thank you and we hope we have been of assistance.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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