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

Section 60 (B) of the Tax of Code of 1997, as amended
BIR Ruling Nos. OT-527-20, & ERP-040-2014
OT- 355-2022
JUL 26 2022

Shell Companies in the Philippines
Multi-Employer Retirement Plan
41st Floor, The Finance Center, 26th Street
Corner 9th Avenue, Bonifacio Global City
Brgy. Fort Bonifacio, Taguig City, Metro Manila

Attention: **FARIDA NIMFA GUYALA-DIMAILIG**
Country Tax Manager

Gentlemen:

This refers to your request for confirmation that the assignment made by Shell Companies in the Philippines Multi-Employer Retirement Plan (SCIP MERP) of its shares of stocks in Tabangao Realty, Inc. (TRI) in favor of Citadel Holdings, Inc. (CHI) is exempt from capital gains tax (CGT) pursuant to Section 60(B) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

It is represented that SCIP MERP was formally registered with the Bureau of Internal Revenue (BIR) on October 26, 2009; that on August 24, 2015, the BIR issued an approval of the revised Multi-Employer Retirement Plan of SCIP MERP; that SCIP MERP owns 60% of TRI, which is equivalent to common shares, with par value of Php1.00 per share; that on November 3, 2021, the trustees of SCIP MERP, represented by its Chairman & Trustee, Lorelie Q. Osial, sold, ceded, transferred and conveyed its common shares in TRI to CHI for and in consideration of the sum of Php . Hence, this request.

In reply, please be informed that the governing provision relative to the tax exemption of income derived by a retirement benefit fund is Section 60 (B) of the Tax Code of 1997, as amended, which states that:

"Section 60(B). Imposition of Tax. —

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(B) Exception. — The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: Provided, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so

distributed to the extent that it exceeds the amount contributed by such employee or distributee."

The above-cited provision sets forth two (2) conditions in order that the earnings of a retirement fund may be exempt from income tax, to wit: 1) the contributions are made to the trust by the employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and (2) under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees. *(BIR Ruling No. ERP-040-2014 dated March 25, 2014)*. These two (2) conditions are sufficiently met by the Retirement Fund as in fact, this Office had already approved the same as a reasonable retirement benefit plan in BIR Certification/Ruling No. ERP-027-2015 dated August 24, 2015.

It bears mentioning that the tax exemption of the income derived by a retirement fund from its investments had already been settled in the case of Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 95022, promulgated on March 23, 1992, where the Supreme Court upheld the judgment of the respondent Court of Appeals which affirmed the decision of the Court of Tax Appeals, the pertinent portion of which is quoted below:

"... it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act (R.A.) No. 4917 approved on June 17, 1967. This law specifically provided:

Sec. 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, 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;

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And rightly so, by virtue of the raison de'etre behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

The tax advantage in R.A. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from *income taxes." (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue vs. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968, 23 SCRA 715).*

It is evident that tax exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intent of the law."

The above pronouncement of the Supreme Court was reiterated in the subsequent case of Miguel J. Ossorio Pension Foundation, Incorporated vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 162175, June 28, 2010.

In view of the foregoing, this Office hereby confirms your opinion that the assignment made by SCIP MERP of its common shares in TRI in favor of CHI for a total consideration of Php is not subject to CGT and consequently from the final expanded withholding tax prescribed under Revenue Regulations No. 2-98, as amended.

However, the exemption from income tax does not include stock transaction tax which is a percentage tax under Title V of the Tax Code of 1997, as amended. Thus, the assignment of the shares, if listed and traded in the local stock exchange shall be subject to the stock transaction tax imposed under Section 127 (A) of the same Code. Moreover, such assignment is subject to documentary stamp tax at the rate of Php1.50 on each Php200.00, or fractional part thereof, of the par value of such stock as prescribed in Section 175 of the Tax Code of 1997, as amended by Republic Act No. 10963.

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 as null and void.

Lilia C. Guillermo

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

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