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

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| Sections 32 (B) (6) (a) and 60 (B) of the Tax Code of 1997, as amended |
| BIR Ruling Nos. 012-11, 055-12 and 193-16 |
| CT- 450 - 2021 |
| DEC 0 9 [illegible] |

POINTWEST TECHNOLOGIES CORPORATION
12 Floor, Citibank Center, 8741 Paseo De Roxas,
Makati City, Metro Manila, Philippines 1226

Attention: **Ma. Josefina M. Reyes**
*Executive Director*
*Administration and Finance*

Gentlemen:

This refers to your letter dated October 12, 2021 requesting on behalf of **Pointwest Technologies Corporation ("PTC")** and **Pointwest Innovations Corporation ("PIC")** for confirmation of your opinion that:

1. The following do not affect the qualification of the Plan as a reasonable retirement benefit plan under Section 32(B)(6)(a) of the National Internal Revenue Code of 1997, as amended (Tax Code):

    a. Adoption and participation of other affiliated and subsidiary companies of PTC and PIC to the Pointwest Multiemployer Employees' Retirement Plan (the "Plan");

    b. Termination of the participation of a Participating Company in the Plan, provided the conditions provided in the Retirement Plan Rules are complied with; and

    c. Transfer of Plan assets and actuarially determined liabilities from the Plan of a Participating Company to the Plan of another Participating Company, in case of transfer of employees/members; however, the conditions under Section 32(B)(6)(a) of the Tax Code, would be applicable in determining whether the retirement benefits of the transferred employees/members are exempt from income tax under said provision of the Tax Code;

2. The retirement benefits to be received by a qualified employee-member of the Plan shall continue to be exempt from income tax provided the two (2) conditions set forth by Section 32(B)(6)(a) of the Tax Code are satisfied, to wit: (1) the employee had been in the service of the same employer for at least ten (10) years; and (2) he/she is already fifty (50) years old at the time of retirement. The income of the Plan's fund from its investments shall continue to be exempt from income tax and withholding tax, and the contributions of the

Participating Companies to the retirement fund are deductible from the Participating Companies' gross income;

3. Portions of the fund of the Plan in excess of the amount actuarially determined to cover the benefits of the covered employees may be reverted back to PTC and PIC without terminating the Plan, provided, that the same shall be declared as income and applicable taxes thereon shall be paid by PTC and PIC, i.e., corporate income tax under Section 27 of the Tax Code, for PTC; and five percent (5%) preferential tax on gross income under Republic Act No. 7916, as amended, for PIC.

Based on your representation and documents submitted, PTC is a domestic corporation duly organized and existing under the laws of the Philippines with Tax Identification Number ("TIN") and office address at 12th Floor Citibank Center (now BDO Towers Valero), 8741 Paseo de Roxas, Makati City. Its primary purpose is to engage in the business of developing, designing and marketing all kinds of information technology ("IT") systems, or parts thereof, including but not limited to hardware and software products. PTC is subject to corporate income tax under Section 27 of the Tax Code.

PIC, which is wholly-owned by PTC, is also a domestic corporation duly organized and existing under the laws of the Philippines with TIN and office address at 3rd Floor Building A, U.P. North Science and Technology Park, Commonwealth Avenue, Quezon City. It was incorporated to engage in the business of developing, designing and marketing all kinds of IT systems, or parts thereof, including but not limited to hardware and software products. PIC is registered as an Ecozone IT Enterprise with the Philippine Economic Zone ("PEZA"), and is availing of the five percent (5%) preferential tax rate on gross income.

PTC established the Plan for qualified officers and employees of PTC and its wholly-owned subsidiary, PIC, which was duly approved by the BIR as a reasonable retirement benefit plan within the contemplation of Section 32(B)(6)(a) of the Tax Code under BIR letter of exemption dated 24 November 2014 (the "Letter of Exemption").

Pointwest Global Pte. Ltd. – Philippine ROHQ ("PROHQ"), a regional operating head quarter licensed to do business under the laws of the Philippines with office address at 12th Floor Citibank Center (now BDO Towers Valero), Paseo de Roxas, Makati City, and an affiliate of PTC and PIC, absorbed a number of employees of PTC and PIC. Thus, in the Letter dated 06 June 2016, the Plan requested the BIR for the inclusion of PROHQ in the Plan effective 01 January 2016. The Plan assets and actuarially determined liabilities pertaining to the absorbed employees of PTC and PIC were transferred from the PTC and PIC Plans to the PROHQ Plan. Since PROHQ has ceased operations, its remaining employees were transferred back to PTC and PIC effective January 1, 2020. Thus, the actuarially determined net Plan assets of PROHQ Plan were also transferred to the PTC and PIC Plans.

Meanwhile, Pointwest Squad Inc. ("PSI"), which is also wholly-owned by PTC and a domestic corporation duly organized and existing under the laws of the Philippines with office address at 12th Floor Citibank Center (now BDO Towers Valero), Paseo de Roxas, Makati City, intends to adopt and participate in the Plan in accordance with the Retirement Plan Rules so all its officers and regular employees can likewise be covered by the Plan. PSI's primary purpose is to engage, undertake in, deal in, and otherwise carry on the business of providing or furnishing any and all forms of services and facilities for local manpower and consulting services, including but not limited to the supply of professional, technical, and highly trained and experienced staff and workers to companies or business entities in need of manpower and consulting services.

After conducting actuarial valuation for funding and financial reporting requirements, it was determined that, as of December 31, 2020, the PTC Retirement Plan has excess assets over its accrued liabilities, amounting to Php ), while the PIC Retirement Plan has excess assets over its accrued liabilities, amounting to Php ). In order to meet working capital requirements, PTC and PIC intend to revert back to the companies the excess retirement fundings to the extent of Php to PTC and Php to PIC. Hence, this request.

In reply, please be informed that Section 32 (B) (6) (a) of the Tax Code provides, to wit:

> "*SEC. 32. Gross Income. –*
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> *xxx xxx xxx*
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> *(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.-*
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> *(a) Retirement benefits received under Republic Act No. 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: Provided, further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes 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.*
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> *xxx xxx xxx*"

The adoption and participation of affiliated and subsidiary companies of PTC and PIC, such as PROHQ and PSI to the Plan, and the termination of the participation of a Participating Company in the Plan when it ceases operations, as in the case of the PROHQ, will not affect the qualification of the Plan as reasonable retirement benefit plan under Section 32(B)(6)(a) of the Tax Code, provided that the conditions set forth by the law are complied with. Under the said provision, in order to consider as a reasonable retirement benefit plan, the following conditions shall be met, to wit: 1) Contributions shall be 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 2) it must be 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.

Article X, Section 1 of the Retirement Plan Rules provides that it shall not "operate to permit any part of the assets of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of the Members. Neither shall it be applied retroactively so as to adversely affect or reduce in any way the benefit accrued to any Member on account of service prior to the date of such amendment, suspension or termination. In no event shall any part of the assets of the Fund revert to the Participating Company before all liabilities of the Plan have been satisfied."

Moreover, the transfer of Plan assets and actuarially determined liabilities from the Plan of a Participating Company to the Plan of another Participating company, in case of transfer of employees/members, does not contravene Section 32(B)(6)(a) of the Tax Code since the Plan fund would still be for the exclusive benefit of the covered employees. In the instant case, the transfer of the Plan assets and actuarially determined liabilities of the absorbed employees of PTC and PIC to the PROHQ Plan, when the latter joined the Plan, and the transfer of the actuarially determined net Plan assets of PROHQ Plan to the PTC and PIC Plans, when the remaining PROHQ employees were transferred to PTC and PIC after PROHQ ceased operations, will not affect the purpose of the Retirement Plan Rules, as for the exclusive benefits of the Members, thus, do not affect the qualification of the Plan as a reasonable retirement benefit plan under Section 32(B)(6)(a) of the Tax Code.

It should be noted, however, that conditions under Section 32(B)(6)(a) of the Tax Code, such as, 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 be applied in determining whether the retirement benefits of the transferred employees/members are exempt from income tax under Section 32(B)(6)(a) of the Tax Code. In case of transfers of employees, the service for the same employer does not have to be continuous, such that the ten (10)-year requirement is still deemed complied with if the employee has been in the service of the same employer for a total of ten (10) years, as the Tax Code only provides "has been in the service of the same employer for at least ten (10) years".

With the foregoing, it is our considered view that the retirement benefits to be received by a qualified employee-member of the Plan shall continue to be exempt from income tax provided the two (2) conditions set forth by Section 32(B)(6)(a) of the Tax Code are satisfied, to wit: (1) the employee had been in the service of the same firm for at least ten (10) years; and (2) he or she is already fifty (50) years old at the time of retirement.

Moreover, the income of the Plan's fund from its investments may also continue to be exempted from income tax and accordingly to withholding tax provided that: *(1) the 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 distribute.*[1]

The contributions of the Participating Companies to the retirement fund are deductible from the gross income. The Plan shall continue to qualify through all the years that it shall be in operation, provided that any modification or amendment in the Retirement Plan Rules and Regulations should be submitted to this Office for certification that such modification or amendment does not affect the qualification of the Plan.

Finally, portions of the fund of the Plan in excess of the amount actuarially determined to cover the benefits of the covered employees may be reverted back to PTC and PIC without terminating the Plan, provided, that the same shall be declared as income and applicable taxes thereon shall be paid by PTC and PIC. In the case of PTC, the amount reverted shall be subject to corporate income tax under Section 27 of the Tax Code, as amended. For PIC, the amount to be returned to it shall be subject to the five percent (5%) preferential tax on gross income under Republic Act No. 7916, otherwise known as "The Special Economic Zone Act of 1995", as amended. *(BIR Ruling No. 012-11 dated January 19, 2011; BIR Ruling No. 055-12 dated 09 February 2012; and BIR Ruling No. 193-16 dated 16 May 2016)*

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 void.

Very truly yours,

**CAESAR R. DULAY**
*Commissioner of Internal Revenue*

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[1] *Section 60 (B) of the National Internal Revenue Code of 1997, as amended.*