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

Sec. 60 (B) 1997 of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 231-2012
OT- 0531-2020
SEP 23 2020

DEVELOPMENT BANK OF THE PHILIPPINES (DBP)
Trust Services Department
Sen. Gil Puyat Ave. cor. Makati Ave.
Makati City

Attention: **MA. TERESA T. ATIENZA**
Head, DBP Trust Banking Group and Trust Officer

Gentlemen:

This refers to your request on behalf of **DBP Gratuity Plan Fund and DBP Provident Fund ("DBP Plans")**, for an updated certificate of exemption from the twenty (20%) final tax on the DBP Plans' income from investment in government securities, Philippine currency bank deposits, deposit substitutes, and Bangko Sentral ng Pilipinas (BSP) issued securities/ instruments.

In reply thereto, please be informed that Section 60 (B) of the National Internal Revenue Code of 1997, as amended provides that:

> *"Sec. 60 (B). Exception. — The tax imposed by Title II shall not apply to employees' 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 . . ."*

The above-cited provision lays down the following requirements 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; 2) such contributions are made 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 3) under the trust instrument it is impossible (in the taxable year and at any time thereafter 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. It is noted that the foregoing conditions are present in the **DBP Plans**, thus, it is exempt from income tax. Since the final tax and the withholding thereof are embraced within the title on "Income Tax", it follows that said trust is exempt from the coverage of the withholding tax regulations.

In the case of *Commissioner of Internal Revenue vs. Court of Appeals*[1], the Supreme Court upheld the judgment of the respondent Court of Appeals in affirming the decision of the Court of Tax Appeals, to *wit*:

> *". . . 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:*
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> > *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 plans 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;*
>
> *xxx xxx xxx*
>
> *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.*
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> *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. Engineering is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:*
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> > *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).*
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> *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.*
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> *xxx xxx xxx*

[1] G.R. No. 95022, March 23, 1992.

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There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56(b), now Sec. 53(b), National Internal Revenue Code of 1997, as amended). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place."

In view of the foregoing, interest income derived by the **DBP Plans** from investment in government securities, Philippine currency bank deposit, deposit substitutes and BSP special deposit accounts is exempt from the income tax and, consequently, from the final withholding tax pursuant to Section 60 (B) of the National Internal Revenue Code of 1997, as amended[2].

It must be emphasized, however, that in its investment activities, no part of the corpus or income of the **DBP Plans** shall be used for or diverted to purposes other than for the exclusive benefit of the member-employees/officials or their beneficiaries.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall 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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[2] BIR Ruling No. 231-2012 dated March 29, 2012.