REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 60(B) and 109(1)(P) of the Tax Code of 1997, as amended.
CIR vs. Court of Appeals, G.R. No. 95022
BIR Ruling No. ERP-38-08
BIR Ruling No. 409-15

396-2018
3-9-2018

BPI ASSET MANAGEMENT AND TRUST CORP.
2nd Floor BPI Bldg., 6768 Ayala Avenue
Makati City, Philippines 1226

Attention : **Ms. Amalia Lourdes S. Valdez**
Vice President

Ms. Rowena S. Salvador
Senior Manager

Gentlemen:

This refers to your letters dated July 7, 2017 and October 13, 2017, requesting confirmatory ruling that the sale by **Novartis Healthcare Philippines, Inc. Retirement Fund** formerly "CIBA-GEIGY Philippines Employees' Retirement Plan" (the "**Retirement Fund**") of its two (2) condominium units covered by Condominium Certificate of Titles (CCTs) with Nos. and is not subject to income tax, hence, not also subject to creditable withholding tax (CWT) under Revenue Regulations No. 2-98, as amended.

It is represented that the Novartis Healthcare Philippines, Inc. Retirement Fund is a BIR-approved retirement plan pursuant to *BIR Ruling* dated April 6,1979 and as such, shall be entitled to all benefits and privileges provided for by Republic Act No. 4917, specifically, that the income of the Retirement Fund from its investments is exempt from income tax; that it was reiterated as a reasonable retirement plan in *BIR Rulings dated April 23, 1981 and April 28, 1992;* and that in *BIR Ruling ERP-38-08* dated February 19, 2008, it was confirmed that the subject Retirement Fund is still considered a qualified reasonable retirement benefit plan within the contemplation of Section 32 (B)(6)(a) of the Tax Code of 1997, as amended.

It is further represented that as part of its investment, Bank of the Philippine Islands (BPI), as Trustee of the Retirement Fund, purchased two (2) Condominium units covered by CCT Nos. and which were registered under the name of Bank of the Philippine Islands-Asset Management and Trust Group pursuant to Article 2.5 (h) of the Trust Agreement dated December 26, 1978 and Article II, Section B.7 of the Trust Agreement dated April 12, 2004; and for the avoidance of doubt, you have requested the Register of Deeds to annotate on the Titles to show that the properties are held by BPI Management and Trust Group (now BPI Asset Management and Trust Corporation) ("BPI-AMTC") as Trustee of Novartis Healthcare Philippines, Inc. Retirement Fund.

396-2018
3-9-2018

It is further represented that BPI-AMTC sold the two (2) condominium units identified and described as Fifth Floor and Sixth Floor, including the appurtenant parking slots of the Fifth Floor and Sixth Floor, located along 120 Gamboa St., corner Salcedo St., Legaspi Village, Makati City, covered by CCT No. (Fifth Floor) and CCT No. (Sixth Floor), both issued by the Register of Deeds for the City of Makati, to Alveo Land Corporation pursuant to the Deed of Absolute Sale dated December 21, 2016 for the purchase price of and Pesos Philippine Currency.

On the basis of the foregoing representations, it is now being requested that the sale by the BPI Management and Trust Group acting in its capacity as Trustee for Norvatis Health Care Philippines, Inc. Retirement Fund of the two (2) condominium units to Alveo Land Corporation, is exempt from income tax under Section 60(B) of the 1997 Tax Code, as amended.

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 1997 Tax Code, as amended, which states that:

> *"Section 60(B). Imposition of Tax.-*
>
> *(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 dated April 6,1979, BIR Ruling*

#396-2018
3-9-2018

dated April 23, 1981, BIR Ruling No. ERP-054-92 dated April 28, 1992, and *BIR Ruling No. ERP-38-08 dated February 19, 2008.*

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 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.

"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:

"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,

#396-2018
3-9-2018

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.

xxx xxx xxx"

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.*

Accordingly, the Retirement Fund, being a reasonable retirement benefit plan established for the benefits of the employees of Novartis Health Care Philippines, Inc., is exempt from income tax and, consequently, from the CWT, on the sale of its two (2) condominium units in favor of the Alveo Land Corporation, pursuant to Section 60(B) of the 1997 Tax Code, as amended. *(BIR Ruling No. 409-15 dated December 14, 2015)*

However, a retirement fund or pension trust is only entitled to exemption from income tax under Section 60(B) of the 1997 Tax Code, as amended. Hence, it may still be subject to other applicable taxes imposed under other provisions of the same Code. Accordingly, the sale of the Retirement Fund to Alveo Land Corporation of its two (2) condominium units is subject to VAT pursuant to Section 109(1)(P) of the 1997 Tax Code, as amended.

Likewise, the sale by the Retirement Fund of its two (2) condominium units in favor of the Alveo Land Corporation is subject to documentary stamp tax (DST) computed based on the consideration contracted to be paid therefor or on their fair market value determined in accordance with Section 6(E) of the 1997 Tax Code, as amended, whichever is higher.

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
0 1 4 1 9 5

K-1