REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 60(B); Sec. 174, NIRC of 1997, as amended
BIR Ruling No. 396-18 BIR Ruling No. 409-15
OT-282-[illegible]
AUG 02 [illegible]

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Attention: **Attys. Mardomeo N. Raymudo, Jr.**
Kristine Joy G. Carlos
Jocel Isidro S. Dilag

Gentlemen:

This refers to your letter dated September 26, 2018, which was indorsed to this office by the Chief, Legal Division of Revenue Region No. 9B, LaQueMar on February 14, 2019, requesting on behalf of your client, Asian Transmission Corporation Retirement Plan, Inc. (the "Company"), that the sale of shares of stock by the Company in favor of Mitsubishi Motors Corporation ("MMC") is not subject to capital gains tax (CGT) pursuant to Section 60(B) of the National Internal Revenue Code of 1997 (Tax Code), as amended, and that the corresponding Tax Clearance Certificate be issued covering the said sale.

It is represented that the Company is a non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Carmelray Industrial Park, Canlubang, Calamba, Laguna. It was incorporated on January 11, 2000 for the following purpose:

> "To provide, through a Retirement Fund, and to administer and manage such Fund for the payment of benefits of the employees of Asian Transmission Corporation when they are retired, disabled or separated from service or to their beneficiaries in the event of death such employees, subject to such conditions and limitations as may be set thereafter."

In 2003, the Company was issued BIR Ruling No. ERP-164-2003 confirming that the amendments to the Rules and Regulations of the Retirement Plan (the "Plan Rules") of the Company, which took effect on January 1, 2000, are not prejudicial to its employees-members. As such, the BIR ruled that such amendments to the Plan Rules do not affect the Plan's qualification under Section 32(B)(6)(a) of the Tax Code, as amended. Consequently, the Plan is no longer subject to the 20% final tax on interest and/or yield on deposit substitute instruments and on interest on its Philippine currency bank deposits.

The Company is the registered owner of ( ) shares of stock of Asian Transmission Corporation ("ATC"), with par value of Php100 per share, covered by the following stock certificates with the corresponding details (the "Shares"):

Stock Certificate No.	Issue Date	No. of Shares	Par Value
A-	July 21, 1993		Php
B	July 11, 1993		
B-	February 9, 1994		
B-	April 28, 1995		
B-	February 9, 1994		
C-	June 30, 1998		
C-	November 28, 1998		
E-	May 15, 2008		
E	April 4, 2011		
E-	September 3, 2010		
TOTAL			

On September 13, 2018, the Company and MMC executed a Share Purchase Agreement and Deed of Absolute Sale of Shares whereby the Company sold to MMC the Shares for the amount of Php per share or a total of Php

On September 14, 2018, the Company filed with the BIR a documentary stamp tax (DST) return (BIR Form No. 2000-OT) and a nil CGT return (BIR Form No. 1707) for the foregoing sale of shares.

On May 6, 2021, the Corporate Secretary of the Company certified that the Retirement Plan of the latter, was not amended nor terminated from January 1, 2000 up to the date of the Sale of ATC shares on September 13, 2018. Subsequent to the sale of ATC shares, the Retirement Plan was amended effective January 1, 2019.

On June 23, 2020, a Certificate of Qualification as a Reasonable Employees' Retirement Benefit Plan (Certificate of Tax Exemption No. RP 080-2020 was issued by the BIR to the Company, confirming that the amendments made on January 1, 2019 in the Retirement Plan do not affect its status as a reasonable retirement benefit plan.

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, 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 Company's Retirement Fund as in fact, this Office had already approved the same as a reasonable retirement benefit plan in BIR Ruling No. ERP-164-2003 dated August 4, 2003.

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;"

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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. 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, 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.

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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 Company's Retirement Fund, being a reasonable retirement benefit plan established for the benefits of the employees of Asian Transmission Corporation is exempt from income tax and, consequently, from the CGT, on the sale of the aforesaid Shares in favor of MMC. pursuant to Section 60 (B) of the Tax Code, as amended. *(BIR Ruling Nos. 396-18 dated March 9, 2018* and *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 Tax Code of 1997, 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 Company's Retirement Fund to MMC of its Shares is subject to DST pursuant to Section 175 of the Tax Code, as amended.

Finally, 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, income from investment in shares of stocks 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.

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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gps(asian transmission corp ret fund)