Sec. 32 (B)(6)(a), Tax Code
BIR Ruling No. OT-280-2 BIR Ruling No. 1336-18
OT- 384-2022
SEP 08 2022

FUJIFILM DATA MANAGEMENT SOLUTIONS PHILIPPINES CORP.
9/F Science Hub Tower 2, 1110 Campus Ave.
Mckinley Hill Cyberpark
Fort Bonifacio, Taguig City 1634

Attention: **Mr. Johnny L. Rowe**
Regional Delivery Center Manager

Gentlemen:

This refers to your request for exemption from payment of income tax on the retirement benefits of your employee, MR. ALAN D. ORIANZA ("Mr. Orianza").

Background

1. **Fujifilm Data Management Solutions Philippines Corp. (FFDMS PH)**, with Taxpayer Identification Number (TIN) is a data processing/outsourcing company operating in the Philippines since 2013. It took over the business of Salmat Philippines Inc. (Salmat) on January 14, 2013 absorbing some of the employees of Salmat who continued to become employees of FFDMS PH without losing their seniority and years of service.

2. FFDMS PH grants retirement benefits to its employees upon retirement in accordance with the provisions of the Labor Code, as amended. However, for employees absorbed from Salmat, they remained subject to the Retirement Plan of Salmat (Jardine Davies, Inc.). To the knowledge of FFDMS PH, this retirement plan is not registered with the Bureau of Internal Revenue.

3. Mr. Orianza retired from FFDMS PH on October 17, 2021. At the time of his retirement, he was fifty (50) years old and has 24.8 years combined total of service with Salmat and FFDMS PH. He last held the position of Team Leader.

4. While Mr. Orianza was originally an employee of Salmat starting from January 14, 2013, he did not retire from Salmat when FFDMS PH took over the business of Salmat on August 24, 2012. He was absorbed by FFDMS PH together with a number of Salmat employees without loss of seniority and years of service.

Discussion

Section 32 (B)(6)(a) of the National Internal Revenue Code of 1997, as amended, states that:

> "Section 32. Gross Income. —
>
> (B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:
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> xxx xxx xxx
>
> (6) Retirement Benefits, Pensions, Gratuities, etc. —
>
> (a) Retirement benefits received under R.A. 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: . . ., shall not be included in gross income and shall be exempt from taxation."

Thus, if the company maintains a private retirement plan which have been determined by the Bureau of Internal Revenue (BIR) as a "reasonable retirement benefit plan," the retirement benefits that will be received by the employees shall be exempt from income tax, provided that the two (2) conditions are met, viz.: (1) the employee had been in the service of the same private firm for at least ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement. Hence, companies which have reasonable retirement benefit plans, may grant their displaced employees retirement benefits without subjecting the same to withholding income tax provided that the age and length of service requirements under Section 32 (B) (6) (a) of the Tax Code are satisfied.

However, even if the company maintains a retirement plan but was not approved by the BIR as a "reasonable retirement benefit plan," the provisions of Republic Act (RA) No. 7641 shall apply. Section 1 of RA No. 7641, amending the Labor Code of the Philippines, provides:

> "Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:
>
> Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year."

Under Section 1 of RA No. 7641, in the absence of an approved reasonable retirement plan providing for retirement benefits of employees in the establishment, the retirement benefits that will be received by the employees shall be exempt from income tax, provided that the two (2) conditions are met, viz.: (1) the employee had been in the service for at least five (5) years; and (2) he is at least sixty (60) years old but not beyond sixty-five (65) years old at the time of retirement.

Ruling

Considering that the retirement plan of Salmat (Jardine Davies, Inc.) is not determined or approved by the BIR as a "reasonable retirement benefit plan," the requirements under Section 1 of RA No. 7641, in order that the employee benefits received may be granted tax exemption must be present, to wit: (1) the employee had been in the service for at least five (5) years; and (2) he is at least sixty (60) years old but not beyond sixty-five (65) years old at the time of retirement.

Since Mr. Orianza was below sixty (60) years old at the time of his retirement, his retirement benefits therefore, are subject to income tax and consequently to withholding tax.

Please take note also that pursuant to Section 2.78.1 (A) (7) of Revenue Regulations No. 2-98, as amended, the terminal pay i.e., commutation and payment of monetized unused vacation leave credits not exceeding ten (10) days during the year are not subject to income tax and consequently to the withholding tax. However, the same principle cannot apply to sick leave credits since an employee must actually go on sick leave to be able to avail of said leave credits.

It must be understood that the payment to Mr. Orianza of his salaries, 13th month pay and other benefits in excess of the Ninety Thousand Pesos (P90,000.00) threshold, however,

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is subject to income tax and consequently to withholding tax.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

Lilia C. Guillermo

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

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