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

Sec. 32 (B) (6) (a) & (b), Tax Code, as amended
BIR Ruling No. OT-480-21
OT- 362-2022
AUG 12 2022

BO'S COFFEE
#6 Pines, Mandaluyong City

Attention: **Mr. Richel Borde**
Sr. Human Resources Manager

Gentlemen:

This refers to your request for exemption from payment of income tax on the retirement benefits of your retiring employee, MR. EMMANUEL JOVENAL F. INOCIAN ("Mr. Inocian").

As represented, Mr. Inocian, with Taxpayer's Identification No. turned sixty (60) years old on October 12, 2021. He was an employee of Bo's Coffee from July 6, 2006 to November 5, 2021 or for a period of fifteen (15) years. He last held the position of Senior Project and Business Development Manager.

In reply, please be informed that Section 1 of Republic Act (RA) No. 7641 provides, viz.:

> *"SEC. 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*

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earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits 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.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves."

Pursuant to the above provision, in the absence of a retirement plan or other agreement providing for the retirement benefits of employees in the establishment, the retirement benefits set forth under RA No. 7641 shall apply, i.e., at least one-half (1/2) month salary for every year of service of an employee who has reached the age of sixty (60) years or more, but not beyond sixty-five (65) years, and rendered at least five (5) years of service in the company.

Considering that Bo's Coffee has no retirement plan or policy providing for retirement benefits of its employees, and that Mr. Inocian is more than sixty (60) years of age and have more than five (5) years in the service of Bo's Coffee, the retirement benefits provided in RA No. 7641 shall apply.

By express provision of Section 32 (B) (6) (a) of the National Internal Revenue Code (Tax Code) of 1997, as amended, the retirement benefits of employees who meet the age and length of service requirements under RA No. 7641 shall be exempt from withholding tax.

THEREFORE, this Office hereby holds that the retirement benefits to be paid by Bo's Coffee to Mr. Inocian shall be exempt from income tax and consequently, to the withholding tax pursuant to Section 32 (B) (6) (a) of the Tax Code of 1997, as amended.

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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. Inocian of his salaries, 13th month pay and other benefits in excess of the Ninety Thousand Pesos (P90,000.00) threshold 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 CATRIS GUILLERMO
Commissioner of Internal Revenue
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