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

Section 32(B)(6)(b), 1997 NIRC BIR Ruling No. 555-2012 BIR Ruling No. 425-2011 BIR Ruling No. 008-2011
#334-2016
6-29-2016

Quisumbing Torres
12/F, Net One Center
26th St. cor. 3rd Ave., Crescent Park West
Bonifacio Global City, Taguig City

Attention : Attys. Dennis G. Dimagiba and Maria Ana Camila C. Jacinto-Lagustan

Gentlemen:

This refers to your letter dated April 15, 2015 requesting on behalf of your client, Diageo Philippines, Inc. (Diageo for brevity) for confirmation of opinion that the separation benefits received by the latter's employees who have been terminated from service pursuant to an approved redundancy program due to the company's cost-cutting measures is exempt from income tax and consequently from withholding tax pursuant to Sec. 32(B)(6)(b) of the 1997 Tax Code, as amended.

Documents submitted show that Diageo (TIN is a domestic corporation registered with the Securities and Exchange Commission (SEC) under Company Reg. No. on September 30, 1993. It is organized primarily to import, export, manufacture, market, distribute, buy and sell, by wholesale, all kinds of beverages and liquors and to deal in any materials, articles or things required in connection with or incidental to the importation, exportation, manufacturing, marketing or distribution of such products. Diageo's production plant was previously located at 111 Technology Avenue, Laguna Technopark, Biñan, Laguna. Due to Diageo's intention to become a customer-driven organization that reduces cost, drives performance and promotes safety, and to achieve a competitive advantage in the marketplace, it conducted a review of its manufacturing footprint in Asia Pacific with the intention of increasing its competitiveness by streamlining production and reducing costs. In 2012, Diageo sold its manufacturing assets and its production plant. In order to achieve its goals for global structuring, Diageo also streamlined certain corporate and technical positions. As a result, Diageo was constrained to declare certain positions in the company as redundant. In BIR Ruling No. 230-2013 issued on June 20, 2013, our Office confirmed that the separation benefits received by Diageo's manpower complement previously declared redundant were exempt from income tax and withholding tax. As of 31 March 2015, an additional 15 employees
042346 were declared redundant. The employees and the relevant dates of their termination are summarized herein below:

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Name of Employee	TIN	Date of Termination Letter	Date of Notice to the DOLE
Elisa de Guzman		May 24, 2012	May 24, 2012
Rowena Nicerio		June 22, 2012	June 21, 2012
Allan Mallari		June 22, 2012	June 21, 2012
Rommel Turingan		June 22, 2012	June 21, 2012
Aries Mayuga		June 22, 2012	June 21, 2012
Jonathan Dolor		June 22, 2012	June 21, 2012
Ishmael Ordoñez		September 26, 2012	September 28, 2012
Armela Sison		September 26, 2012	September 28, 2012
John Paul Guzman		September 26, 2012	September 28, 2012
Alec Tempongko		May 30, 2013	May 20, 2013
Ireneo Galicia		May 29, 2014	May 29, 2014
Jose Amando Alinas		May 29, 2014	May 29, 2014
Vernon Patrick Lapid		May 29, 2014	May 29, 2014
Raymund Zamora		May 29, 2014	May 20, 2014
Fe Olivia Mir		February 23, 2015	February 27, 2015

the employees whose services were terminated on ground of redundancy were each entitled to receive a separation package consisting of: 1) separation pay of three (3) months for every year of service; 2) commutation of accrued and unused vacation leave credits; and 3) final pay. The Establishment Employment Report was duly received by Department of Labor and Employment-NCR (MUNTAPARLAS Field Office) on several dates and the corresponding Notices of Termination due to Redundancy to the affected employees were also duly received by the afore-stated workers.

In reply, please be informed that pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee is exempt from taxes regardless of age or length of service. The phrase "for any cause beyond the control of said official or employee" connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be asked for or initiated by him.

This Office has had several occasions to rule that the above-mentioned law requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely: (1) the employee is separated from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee; and (2) the employer pays benefits to the official or employee or his heirs as a consequence of such separation. (BIR Ruling No. 008-11 dated 19 January 2011)

In view thereof, this Office is of the opinion that since it appears that the employees

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of Diageo, as enumerated herein have proven to have been separated from the service of the employer because of redundancy, a cause beyond the control of said employees, any amount to be received by them as a consequence of said separation is exempt from income tax and consequently from the withholding tax prescribed under Section 79, Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 6-2001 and 12-2001.

Accordingly, no withholding taxes shall be deducted from the separation benefits and the entire amount thereof shall be given to the entitled separated employee. (BIR Ruling No. 425-11 dated 4 November 2011)

Also, pursuant to Section 2.78.1 (A) (7) of RR 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. Conversely, the cash equivalent of vacation leave exceeding ten (10) days is subject to tax. However, this 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. (BIR Ruling No. 425-11 dated 4 November 2011)

It is, however, understood that this exemption does not include the payment of the separated employees' salaries and the payment of the 13th month pay and other benefits in excess of the Php82,000.00[1] threshold under Section 2.78.1 (A)(3)(a) and (A)(7) of RR 2-98, as amended. (BIR Ruling No. 555-12 dated September 6, 2012)

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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JUN 24 2016

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[1] As amended by Revenue Regulations No. 3-2015 dated March 13, 2015