REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sections 60(B) of the Tax Code, as amended; Revenue Regulations No. 1-68, as amended.
BIR Ruling No. 100-2016; BIR Ruling No. 180-2014; BIR Ruling No. 234-2013
ST- 019-2025
JAN 07 2025

DONATO & ZARATE
7/F Electra House
115 Esteban Street
Legaspi Village
1229 Makati City, Philippines

Attention: **DEMOSTHENES B. DONATO**

Gentlemen:

This refers to your request on behalf of your client, Sunjin Philippines Corporation and Sunjin Genetics Corporation (**"Sunjin Corporations"**), for partial reconsideration of BIR Ruling No. 312-2017 dated December 11, 2017, by deleting the prohibition which states that a "trustee should not in any way use the retirement fund to invest/deposit in any of the employer's business ventures because it would destroy the separate entity of the trust."

Under BIR Ruling No. 312-2017, the Bureau finds Sunjin Multiemployer Contribution Plan to be a "reasonable retirement plan" within the contemplation of Section 32(B)(6)(a) of the National Internal Revenue Code of 1997, as amended (**"Tax Code"**). Therefore, the: (a) retirement benefits that will be received by a qualified retiring employee-member shall be exempt from income tax provided that he/she: (i) had been in the service of the same private firm for at least ten (10) years; and (ii) is already fifty (50) years old at the time of retirement; (b) income of the trust fund from its investments is exempt from income tax; and (c) contributions of the company to the retirement fund are deductible from its gross income. One of the conditions stated in BIR Ruling No. 312-2017 is that the trustee should not in any way use the retirement fund to invest/deposit in any of the employer's business ventures because it would destroy the separate entity of the trust.

In reply, please be informed that an employees' trust (the **"Retirement Fund"**) is a trust maintained by an employer to provide retirement, pension or other benefits to its

employees. It bears emphasis that the Retirement Fund, which is governed by an employer-appointed trustee, is a taxable entity separate from the employer.[1]

Section 5 of Revenue Regulations ("**RR**") No. 1-68, as amended, provides that the Retirement Fund may be used to purchase investments subject to specific exceptions, to *wit*:

> *"**SECTION 5. Investment.** — No specific limitations are provided in the law with respect to investments which may be made by the trustees of an employee's trust. Generally, the fund may be used by the trustees to purchase any investments permitted by the trust agreement. However, the exemption of the trust income under Section 60 (b) of the Tax Code, may be denied if the trust —*
>
> *(a) lends any part of its income or corpus without adequate security and a reasonable rate of interest;*
> *(b) pays any compensation in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered;*
> *(c) makes any part of its services available on a preferential basis;*
> *(d) makes any substantial purchase of securities or any other property for more than adequate consideration in money or money's worth;*
> *(e) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth; or*
> *(f) engages in any other transaction which results in a substantial diversion of its income or corpus.*
>
> *to or from the employer or, if the employer is an individual, to or from a member of the family of the employer, or to or from a corporation controlled by the employer through the ownership, directly or indirectly, of 50% or more of the total combined voting power of all classes of stock entitled to vote or 50% or more of the total value of shares of all classes of stock of the corporation."* (Underscoring supplied)

Corollarily, Section 60(B) of the Tax Code provides that any income derived by Retirement Fund shall not be subject to income tax as long as, among others, all its income will be used exclusively for the benefit of such employees, without any diversion towards alternative objectives, to *wit*:

> *"**SECTION 60. Imposition of Tax.***
>
> *(A) xxx*
>
> *(B) Exception. The tax imposed by this Title shall not apply to employee's trust which forms part of the 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 liabilities with respect to employees under the trust, for any part of the corpus or income be (within the taxable year or thereafter) used for, or diverted to, purposes other than the exclusive benefit of his employees:*

[1] Development Bank of the Philippines v. Commission on Audit, G.R. No. 144516, February 11, 2004, citing Commissioner of Internal Revenue v. Visayan Electric Co.,132 Phil. 203 (1968).

Provided, Than 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"

Based on the foregoing provisions, while it is true that there are no specific limitations provided in the law with respect to investments which may be made by the trustee of a Retirement Fund, it is important however, that the said fund be invested in proper and sound investments for the sole benefit of the employees. Also, by removing the income tax exemption of Retirement Fund income relating to transactions listed in Section 5 of RR No. 1-68, it may be deduced that the intention of the Legislature is to ensure that the trustee will only invest the Retirement Fund in income-generating investments, thereby guaranteeing that the Retirement Fund will always be sufficient to pay for the retirement benefits of any qualified retiring employee.

Section 5(f) of RR No. 1-68 specifically states that the trustee of the Retirement Fund is prohibited to engage in other transactions with the employer which may result in a substantial diversion of its income or corpus. Considering the potential variability in the business operations of the employer which may adversely affect its capability to contribute to the Retirement Fund, it is deemed best to allow the trustees of a Retirement Fund to use and/or invest said funds in various diverse investments (other than the business ventures of the employer) with the sole objective of accumulating adequate resources to fulfill its obligations. Therefore, permitting the trustee to invest the Retirement Fund in the business ventures of the employer runs contrary to the aforementioned principle and may result in the inability to meet the Retirement Fund's obligations.

Furthermore, aside from the above-stated rationale, the prohibition to use the Retirement Fund to invest/deposit in any of the employer's business ventures is to maintain the separation of funds (or avoid the comingling of funds) of the Retirement Fund from those of the employer, which may be an avenue for evasion of taxes.[2]

Such being the case, this Office hereby rules that your request for partial reconsideration of BIR Ruling No. 312-2017 dated December 11, 2017, by deleting the prohibition to use the retirement fund to invest/deposit in any of the employer's business ventures, is denied for bereft of merit. Consider this as our final resolution on the matter.

Very truly yours,

BIR017932

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

K-1

[2] BIR Ruling No. 100-2016; BIR Ruling No. 180-2014; BIR Ruling No. 234-2013.