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

Section 32 (B) (6) (b) of the Tax Code, as amended
BIR Ruling No. OT-172-21
OT- 103 - 2023
NOV 23 2023

DUTY FREE PHILIPPINES CORPORATION
Fiestamall, E.H.A. Bldg., Ninoy Aquino Ave.
Parañaque City 1700

Attention: **Dominador A. Sarmiento**
Officer-in-Charge, Finance Division

Vicente Pelagio A. Angala
Chief Operating Officer

Gentlemen:

This refers to your request for a ruling/confirmation on the non-taxability of the Separation Incentive Pay (SIP) granted to the affected employees of Duty Free Philippines Corporation ("Duty Free") pursuant to Governance Commission for Government-owned and Controlled Corporations [GOCCs] (GCG) Memorandum Order No. 2022-08 ("GCG MO No. 2022-08).

It is represented that Duty Free is a GOCC reorganized as an attached agency of the Department of Tourism pursuant to Republic Act (RA) No. 9593, otherwise known as the Tourism Act of 2009.

On September 23, 2022, GCG, pursuant to its mandate under Section 5 (a) of RA No. 10149, issued GCG MO No. 2022-08, approving Duty Free's Restructuring Plan. The new Organizational Structure and Staffing Pattern (OSSP) has thirty-two (32) organizational units with three hundred forty-five (345) plantilla positions compared to Duty Free's existing OSSP consisting of one thousand one hundred eighty (1,180) plantilla positions, seven hundred forty-eight (748) of which are filled as of April 11, 2022. On account of the said restructuring plan, the affected employees shall be given SIP computed as follows:

Years in Service	Rates
First 20 years	1 x Monthly Basic Salary x number of years
20 years & 1 day up to 30 years	1.25 x Monthly Basic Salary x number of years
30 years & 1 day and above	1.5 Monthly Basic Salary x number of years

In reply, please be informed that Section 32 (B) (6) (b) of the National Internal Revenue Code of 1997 (Tax Code), as amended, excludes separation pay from the ambit of gross income, *viz*:

"Section 32. Gross Income. –

xxx xxx xxx

(B) Exclusion from Gross Income. – The following items shall not be included in the gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(6) Retirement Benefits, Pensions, Gratuities, etc. –

xxx xxx xxx

(b) 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 said official or employee****.*

xxx xxx xxx"
(Emphasis and underscoring supplied)

The provision provides that 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 due to, among other things, 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 the 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 of his own making.[1] Also, the employee must not have been given an option to remain in employment.

From the foregoing, this Office is of the considered opinion that the SIP granted to the affected personnel of Duty Free due to the its reorganization pursuant to GCG MO No. 2022-08 is excluded from gross income and shall be exempt from taxation in accordance with Section 32 (B) (6) (b) of the Tax Code, as amended. Therefore, any and all amounts to be received by them as a consequence of their involuntary separation from the government service is not subject to income tax imposed under Section 24 (A) of the Tax Code, as amended, and consequently to the withholding tax on wages pursuant to Section 79 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 ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
028585

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[1] BIR Ruling No. OT-172-21, May 19, 2021