REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 32(A)(1); 79 of the Tax Code of 1997, as amended; RR 2-98, as amended
BIR Ruling No. 009-04
OT-133-2022
APR 18 2022

PILIPINAS SHELL PETROLEUM CORPORATION
11th Floor Shellhouse Building, 156 Valero Street
Salcedo Village, Bel-Air, Makati City

Attention: **Ms. Farida Nimfa Guyala-Dimailig**
Country Tax Manager

Gentlemen:

This refers to your request for a ruling as to the correct period to withhold on the payment of accrued bonuses given by your company, Pilipinas Shell Petroleum Corporation ("PSPC") to its officers and employees.

Background

PSPC is a company registered with the Securities and Exchange Commission (SEC) with the primary purpose "to construct, operate and maintain petroleum refineries, works, plant machinery, equipment, dock and harbor facilities and auxiliary works and other facilities of all kinds used in or in connection with the manufacture of products of all kinds which are wholly or partly derived from crude oil". It is likewise registered with the Bureau of Internal Revenue (BIR) as a manufacturer of refined petroleum products on January 9, 1959 with Tax Identification Number (TIN)

PSPC has granted to its employees an Annual Performance Bonus for Taxable Year (TY) 2017 but the same was actually distributed to its employees only in the succeeding year, TY 2018. PSPC withheld the corresponding taxes on such accrued bonus payments, reported the same as part of its payments for the month of December 2017 and filed with and remitted to the BIR the tax withheld within the prescribed period in the month of January 2018.

Based on PSPC's policies, the Annual Performance Bonus is paid to its employees based on performance results with the objective of ensuring appropriate significant incentives for the employee relative to a timely and high-quality performance of their duties as well as to enhance individual work responsibility. The said performance bonus is granted to each employee based on individual computations and in accordance with a uniformly prescribed formula adopted and approved by the company. The same is being followed strictly and without any deviation throughout the years.

In general, each of the employee's annual base salary is computed based on a set formula utilizing an employee's base salary (i.e., hourly rate multiplied by the average monthly standard hours) with certain factors (i.e., regional coefficient and northern uplift) as of the last day of the month prior to the accounting month, which will then be multiplied by various factors (e.g., Business Performance Factor and Individual Performance Factor, etc.) based on the approved

OT- APR 1 8 2022

formula to determine the amount of the performance bonus to be given to a particular employee for the subject year.

It is important to note that certain factors in the formula can only be determined with certainty in the succeeding year and cannot be known or estimated as of December 31 of the previous year. Among those factors vital to the computation of the performance bonus is the Business Performance Factor (BPF) which is generally the annual measure of PSPC's business performance based on an internally designated Group Scorecard. This is not computed by the Philippine office but being determined by PSPC's head office abroad taking into account various factors and aspect relating to its global operations. Historically, said factor is only provided to PSPC in the month of February. Thus, PSPC can only proceed in its own computation of its employees' bonuses once it obtains said BPF from its office abroad, the same being one of the important variables in its formula to compute such bonuses. The said factor could, and in fact, significantly vary each year because of different and changing factors in its global operations from year to year. In this regard, it is difficult to even reasonably estimate said business factor for each year and proceed with the computation to facilitate the accrual of said bonus payments. The same cannot be based merely on a reasonable estimation nor a historical record of the amount that could enable PSPC to determine the same at the time of accrual. Note also, that PSPC makes the distribution of said income in the succeeding year or as soon as it is able to determine the critical factor by February of the succeeding year, which is the earliest possible time for the Company to determine such required factor with respect to PSPC's performance and thereby, makes the final computation of the said performance bonus for each individual employee entitled thereto.

It should be emphasized that although the said bonus payments were already accrued in 2017, the same were not made available to the employees to be claimed or withdrawn at any time they wish during that period. As such, said payments could not be considered at that time in any way under the control and disposition of said employees. The employees only had control of the bonus after the same was made available for withdrawal or actually distributed, both in the succeeding year but not as of December 2017.

Based on the foregoing, you now request for confirmation that no withholding tax was due on PSPC's bonus payments accrued on December 2017 and actually distributed to its employees only in 2018. As such, the withholding tax due was erroneously withheld at the time of accrual in December 2017 and remitted to the Government, since the withholding tax should only be due upon actual payment to and receipt by PSPC employees in the succeeding taxable year, TY 2018. Consequently, PSPC should likewise claim the bonus payments as part of its deductible expenses for the same period in TY 2018.

In reply, please be informed that Section 32(A)(l) of the National Internal Revenue Code (Tax Code) of 1997, as amended, provides that the term *"gross income"* includes compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items.

On the other hand, Section 2(a) of Revenue Regulations (RR) No. 8-2018 defines *compensation income*, to wit:

> *"SECTION 2. Definition of Terms. — Words and/or phrases used under these regulations shall mean:*
>
> *a. Compensation Income — in general, means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code.*

> *The name by which the remuneration for services is designated is immaterial. Thus, salaries, wages, emoluments and honoraria, allowances, commissions (e.g., transportation, representation, entertainment and the like); fees including director's fees, if the director is, at the same time, an employee of the employer/corporation;* ***taxable bonuses*** *and fringe benefits, except those which are subject to the fringe benefits tax under Sec. 33 of the Code and the allowable "de minimis" benefits; taxable pensions and retirement pay; and other income of a similar nature constitute compensation income."* (Emphasis supplied)

From the definition of gross income and compensation income as afore-quoted, it is clear that the bonus payments granted by PSPC to its employees are considered compensation income and thus, subject to withholding tax on compensation.

With regard to the time when the withholding of the tax shall be made, Section 2.57.4 of RR No. 2-98, as amended, also provides:

> "SECTION 2.57.4. Time of Withholding. — The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term "payable" refers to the date the obligation become due, demandable or legally enforceable." (Underscoring ours)

It is likewise provided in Section 2.78 of RR No. 2-98, as amended, that the withholding of tax on compensation income is a method of collecting the income tax at source upon *receipt of the income*, and the employer must withhold from such *compensation paid* an amount computed pursuant to RR No. 2-98, as amended. Thus, it would appear that for purposes of withholding, the payor should deduct and withhold the proper tax at the time the income payment is paid.

In relation thereto, Section 2.83.6 of RR No. 2-98, as amended, provides, to wit:

> "SECTION 2.83.6. Applicability of Constructive Receipt of Compensation. — The withholding tax on compensation shall apply to compensation actually or constructively paid. Compensation is constructively paid within the meaning of these Regulations when it is credited to the account of or set apart for an employee so that it may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the compensation must be credited or set apart for the employee without any substantial limitation or restriction as to time or manner of payment or condition upon which payment is to be made, and must be made available to him so that it may be drawn upon at any time, and its payment brought with his control and disposition. A book entry, if made, should indicate an absolute transfer from one account to another. If the income is not credited, but it is set apart, such income must be unqualifiedly subject to the demand of the taxpayer. Where a corporation contingently credits its employees with a bonus stock, which is not available to such employees until some future date, the mere crediting on the books of the corporation does not constitute payment." (Underscoring ours)

In the present case, however, there is no actual payment of bonus yet made by PSPC to its employees as of December 2017, which would have subjected said bonus payments to withholding tax. As represented, it is difficult to estimate the business factor that will lead to the determination of the amounts to be given as bonus payments to the employees. The same cannot be based merely on a reasonable estimation nor a historical record of the amount that could enable PSPC to determine the same at the time of accrual. For the same reason, PSPC makes the distribution of

said income in the succeeding year or as soon as it is able to determine the critical factor by February of the succeeding year, and thereby, makes the final computation of the said performance bonus for each individual employee entitled thereto.

Notwithstanding that the said bonus payments were already accrued by PSPC in 2017, the same were not made available to the employees to be claimed or withdrawn at any time they wish during that period. As such, said payments could not be considered at that time in any way under the control and disposition of the employees. The employees only had control of the bonuses after the same was made available to them for withdrawal or actually distributed, both in the succeeding year but not as of December 2017.

Hence, the accrual of the performance bonus in December 2017 cannot be considered as credited to or set apart for the benefit of the employees as contemplated under the applicable withholding tax provisions on constructive receipt. There being no receipt of the bonus payments by the employees of PSPC in December 2017, whether actual or constructive, PSPC has no obligation to withhold the corresponding tax on said accrued bonuses at the time. Therefore, the tax withheld by PSPC for its accrued bonuses in December 2017 was erroneously made and remitted to the BIR in January 2018. *(BIR Ruling No. 009-2004 dated September 13, 2004)*

Consequently, PSPC should claim the bonus payments as part of its deductible expenses for the same period in taxable year 2018, and not in 2017.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

By:

MARISSA G. CABREROS
Deputy Commissioner
Legal Group
Officer-in-Charge

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gps(PSPC-accrued bonuses)