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

Sec. 60(B), 1997 Tax Code, as amended
BIR Ruling No. 201-19
CT [illegible] 2021
JUL 12 2021

PPLC EMPLOYEES RETIREMENT PLAN, INC.
Block 11 Lot 1 Laguna International Industrial Park
Barangay Mamplasan, Biñan, Laguna

Attention: **Ms. Catherine A. Garbin**
Secretary

Gentlemen:

This refers to your letter dated October 15, 2018 requesting for clarification regarding the following:

1. Is the retirement plan's income from its investments particularly arising from rent of its real properties subject to withholding tax?

2. If not, what are the required documents that can be given to the lessee for them not to withhold taxes from their rental payments to the retirement plan?

3. Is the rental income from the retirement plan's real properties subject to Value-Added Tax (VAT)?

As represented, PPLC EMPLOYEES RETIREMENT PLAN, INC. is an employees' retirement plan exempt from income tax per BIR Ruling No. ERP-253-2012 issued on April 20, 2012.

In reply, please be informed as follows:

Retirement plan's income from rent is not subject to withholding tax.

Section 60(B) of the 1997 Tax Code, as amended, provides:

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

Section 60(B) of the 1997 Tax Code, as amended, specifically exempts employees' trust from income tax. Since the five percent (5%) creditable withholding tax (CWT) imposed under RR No. 2-98, as amended, on rental fees for real property is embraced within the title on "Income Tax", it follows that said trust is exempt from the coverage of the withholding tax regulations.

The Supreme Court in the case of Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 95022, promulgated on March 23, 1992, states the reason for the tax-exemption enjoyed by the income of the pension trust, as follows:

". . . it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act (R.A.) No. 4917 approved on June 17, 1967. This law specifically provided:

> *'Sec. 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plans maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;'*
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> *x x x x x x x x x*

And rightly so, by virtue of the raison de'etre behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

The tax advantage in R.A. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Engineering

is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading: Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue vs. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968, 23 SCRA 715).

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intent of the law."

Considering that PPLC Employees Retirement Plan is an employees' retirement trust fund established under Republic Act (R.A.) No. 4917 for the exclusive benefit of all its regular employees and the corpus or income of the fund is not used for or diverted to purposes other than for the exclusive benefit of the members and their beneficiaries, this Office is of the opinion as it hereby holds that its investments remain exempt from income tax and consequently from withholding tax pursuant to Section 60(B) of the 1997 Tax Code, as amended. Accordingly, the rental income derived by the retirement plan from the lease of its real properties is not subject to income tax and consequently to withholding tax prescribed in RR No. 2-98, as amended by RR Nos. 11-2018. However, it must be emphasized that in its investment activities, no part of the corpus or income of the PPLC Employees Retirement Fund shall be used for or diverted to purposes other than for the exclusive benefit of the member-employees/officials or their beneficiaries.

Rental income from retirement plan's real properties is subject to VAT.

As regards to whether rental income from the retirement plan's real properties is subject to VAT, please be informed that the tax exemption provided under Section 60(B) of the 1997 Tax Code, as amended, in favor of the employees' trust funds covers income tax only. It is a rule that if a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect[1]. This is consistent with the maxim *expressio unius est exclusio alterius*. Accordingly, the rental income from the retirement plan's real properties is subject to VAT.

This ruling may be presented to the lessee as proof of exemption from the 5% CWT provided that the official receipts issued for the payment of rental fees are registered under the name of the retirement plan. Should the payment be made in checks, said checks shall be made

[1] Tolentino vs. Paqueo, 523 SCRA 377.

payable to the Retirement Plan itself, and not to the company/employer. Otherwise, the rental fees shall be subjected to the 5% CWT and 5% final value-added tax (VAT), if applicable.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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