October 23, 2018

BIR RULING NO. 1301-18

Section 60 (B); Section 127 (A) of the NIRC
of 1997, as amended

Rizal Commercial Banking Corporation
RCBC Head Office, Yuchengco Tower
RCBC Plaza, 6819 Ayala Avenue, Makati City

Attention: *AAA*

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BBB

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Gentlemen :

This refers to your letter dated 06 October 2016 requesting on behalf of **Takata (Philippines) Corporation Retirement Plan**, confirmation that:

1) the income earned from the sale of its investments in shares of stock (listed in the PSE) is exempt from income tax, capital gains tax and stock transaction tax under Section 127 (A) of the Tax Code of 1997, as amended, pursuant to Section 60 (B) of the same Code;

2) the income earned from the sale of its investments in shares of stock which are not listed in the PSE is exempt from capital gains tax under Section 127 (A) of the Tax Code of 1997, as amended, pursuant to Section 60 (B) of the same Code;

3) Dividends from its investments in shares of stock (whether listed in the PSE or not) are exempt from the final tax under Section 60 (B) of the same Code; and

4) interest income from its investments in its currency bank deposits, deposit substitutes, money market placements, bonds, securities and trust funds remain exempt from the 20% final tax pursuant to Section 60 (B) of the

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same Code.

It is represented that the Rizal Commercial Banking Corporation (RCBC) is a universal banking corporation duly organized and existing under the laws of the Republic of the Philippines, with authority to engage in trust and fiduciary business though its Trust and Investments Group; that it is the trustee of Takata (Philippines) Corporation Retirement Plan; that Takata (Philippines) Corporation Retirement Plan is a qualified retirement plan established by Takata (Philippines) Corporation for its employees and is duly registered as such with the BIR; and that Takata (Philippines) Corporation Retirement Plan has several investments in shares of stock either listed and traded in the Philippine Stock Exchange or not.

In reply thereto, please be informed that Section 60 (B) of the Tax Code of 1997, as amended, provides that —

> "Sec. 60. (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 x x x."

Sec. 60 (B), *supra* specifically exempted employees' trust from income tax. Since the final tax and withholding tax thereof are embraced within the title on "Income Tax," it follows that said trust is exempt from the coverage of the withholding tax regulations. Otherwise, the exception becomes meaningless.

Similarly situated is the case of *Commissioner of Internal Revenue vs. Court of Appeals*, G.R. No. 95022 promulgated on March 23, 1992, where the Court upheld the judgement of the respondent Court of Appeals in affirming the decision of the Court of Tax Appeals, which ruled —

> "x x x 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 Rep. Act No. 4917 approved on 17 June 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

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plan 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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"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 the 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 RA 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. Enlightening 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 v. Visayan Electric Co., et al., G.R. No. L-22611, 27 May 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 intendment of the law.

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"Notably, too, all the tax provisions herein treated of come under Title II of the Tax Code on "Income Tax." Section 21 (d), as amended by Rep. Act No. 1959, refers to the final tax on individuals and falls under Chapter II; Section 24 (cc) to the final tax on corporations under Chapter III; Section 53 on withholding of final tax to Returns and Payment of Tax under Chapter VI; and Section 56 (b) to tax on Estates and Trusts covered by Chapter VII, Section 56 (b), taken in conjunction with Section 56 (a), *supra*, explicitly exempts employees' trusts from "the taxes imposed by this Title." Since the final tax and the withholding thereof are embraced within the title on "Income Tax," it

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follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

"There can be no denying either that the final withholding tax is collected from *income* in respect of which employees' trusts are declared exempt (Sec. 56 [b], now 53 [b], Tax Code). The application of the withholdings system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of *income* taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

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Applying the foregoing in the instant cases, the income of **Takata (Philippines) Corporation Retirement Plan** earned from investments in shares of stocks not listed and traded in the Philippine Stock Exchange is exempt from capital gains tax, and consequently from final withholding tax. Moreover, its interest income derived from investments in currency bank deposits, deposit substitutes, trust funds and/or similar arraignments in money market placements is exempt from the 20% final withholding tax imposed under Section 24 (B) (1) of the 1997 Tax Code, as amended.

It is worthy to note, however that the tax incentive granted to a pension trust under Section 60 (B) of the 1997 Tax Code, as amended, is limited only to Title II which refers to Income Tax. Please note that stock transaction tax under Section 127 (A) of the 1997 Tax Code, as amended, is not embraced within the title of "Income Tax." Thus, the stock transaction tax which is a percentage tax under Title V of the 1997 Tax Code, as amended, is not covered by Section 60 (B) of the same Code. Accordingly, any income earned by **Takata (Philippines) Corporation Retirement Plan**, from shares of stocks listed and traded in the local stock exchange shall be subject to stock transaction tax imposed under Section 127 (A) of the 1997 Tax Code, as amended. It is well settled that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake, consistent with the principle that tax exemption must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. *(City of Iloilo, et al. vs. Smart Communications, Inc., G.R. No. 167260 dated February 27, 2009)*

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,

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(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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