November 15, 2018

BIR RULING NO. 1339-18

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 555-2012; BIR Ruling No. 425-2011; BIR Ruling No. 008-2011

Docomo interTouch Business Solutions, Inc.
10/F Picadilly Star, 4th Avenue cor. 27th Street
Bonifacio Global City, Taguig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 25, 2015 requesting for confirmation of opinion that the separation benefits received by the employees of Docomo intertouch Business Solutions, Inc. (Docomo for brevity) who have been separated from service due to the implementation of a redundancy program is exempt from income tax and consequently from withholding tax pursuant to Sec. 32 (B) (6) (b) of the 1997 Tax Code, as amended.

Documents submitted show that Docomo (TIN 000-000-000-000) is a domestic corporation organized and registered with the Securities and Exchange Commission (SEC) under Company Reg. No. CS201105423 dated March 25, 2011. It is primarily engaged in the business of operating a call center enterprise providing inbound contact center services such as hotel customer care and help desk. Docomo started commercial operations on April 1, 2011. It is a wholly-owned subsidiary of Docomo interTouch Pte. Ltd. (Parent company), a company incorporated in Singapore. The ultimate parent company is Nippon Telephone and Telegraph Corporation, a company incorporated in Japan. Its registered address is located at 10/F Picadilly Star, 4th Avenue cor. 27th Street, Bonifacio Global City, Taguig City.

On January 30, 2015, Docomo has announced that eight (8) workers will be affected by its retrenchment program due to redundancy. Due to the implementation of headcount reduction as a result of change in business model brought by market conditions which will require less customer engagement, streamlining of workloads and cost-cutting exercises, Docomo has decided to terminate some employees on the ground of redundancy effective

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March 2, 2015. The following is the list of Docomo's employees that will be separated from employment:

No.	Name of Employee	Position	TIN
1	BBB	_____	000-000-000
2	CCC	_____	000-000-000
3	DDD	_____	000-000-000
4	EEE	_____	000-000-000
5	FFF	_____	000-000-000
6	GGG	_____	000-000-000
7	HHH	_____	000-000-000
8	III	_____	000-000-000

The Establishment Termination Report was duly received by Department of Labor and Employment-NCR (MUNTAPARLAS Field Office) on January 29, 2015, and the corresponding Notices of Termination due to Redundancy to the affected employees are duly received by the afore-stated workers.

In reply, please be informed that pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, 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 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 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 asked for or initiated by him.

This Office has had several occasions to rule that the above-mentioned law requires the presence of two (2) conditions in order that the employee benefits may be granted tax exemption, namely: (1) the employee is separated from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee; and (2) the employer pays benefits to the official or employee or his heirs as a consequence of such separation. (BIR Ruling No. 008-11 dated 19 January 2011)

In view thereof, this Office is of the opinion that since it appears that the employees of Docomo, as enumerated herein have proven to have been separated from the service of the employer because of redundancy, a cause beyond the control of said employees, any amount to be received by them as a consequence of said separation is exempt from income tax and consequently from the withholding tax prescribed under Section 79, Chapter XIII, Title II of

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the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98, as amended by Revenue Regulations Nos. 6-2001 and 12-2001.

Accordingly, no withholding taxes shall be deducted from the separation benefits and the entire amount thereof shall be given to the entitled separated employee. (BIR Ruling No. 425-11 dated 4 November 2011)

Also, pursuant to Section 2.78.1 (A) (7) of RR 2-98, as amended, the terminal pay, *i.e.*, commutation and payment of monetized unused vacation leave credits not exceeding ten (10) days during the year are not subject to income tax and consequently to the withholding tax. Conversely, the cash equivalent of vacation leave exceeding ten (10) days is subject to tax. However, this same principle cannot apply to sick leave credits since an employee must actually go on sick leave to be able to avail of said leave credits. (BIR Ruling No. 425-11 dated 4 November 2011)

It is, however, understood that this exemption does not include the payment of the separated employees' salaries and the payment of the 13th month pay and other benefits in excess of the Php82,000.00 [1] threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of RR 2-98, as amended. (BIR Ruling No. 555-12 dated September 6, 2012)

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 as null and void.

Very truly yours,

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

Footnotes

1. As amended by Revenue Regulations No. 3-2015 dated March 13, 2015.

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