November 15, 2018

BIR RULING NO. 1358-18

RA 8424, Sections 24 (A), 24 (B) (2), 32 (B) (6) (a), 32 (B) (7) (e), 57, 60 (B); Executive Order No. 641; Republic Act. No. 9417

Office of the Solicitor General
OSG Building, 134 Amorsolo St.,
Legaspi Village, Makati City

Attention: *ASG. Ellaine Rose A. Sanchez-Corro*
Chairperson, OSG Provident Fund

Gentlemen :

This refers to your clarificatory letters dated February 28, 2013 and January 22, 2014 requesting for clarification on the taxation of the dividends distributed from the **OFFICE OF THE SOLICITOR GENERAL PROVIDENT FUND** (**OSG Provident Fund** or **Fund**, for brevity) to the employees of the **OFFICE OF THE SOLICITOR GENERAL (OSG)**; and your July 15, 2015 letter request for revalidation of the Tax Exemption Ruling issued to the OSG on December 16, 2008, which ruled that the OSG Provident Fund is an employees' trust exempt from income tax under Section 32 (B) of the Tax Code, as amended.

It is represented that the **OSG Provident Fund** was created pursuant to Executive Order No. 641 and Republic Act No. 9417 [1] and consistent with the DBM Circular No. 2008-3. It was formally established on September 3, 2008 through Office Order D-074, Series of 2008 issued and signed by former Solicitor General Agnes VST Devanadera, to promote the welfare of its members by providing loan facilities and other supplementary benefits. [2] Similar to the provident funds of the Government Service Insurance System (GSIS), the Development Bank of the Philippines (DBP) and the National Transmission Corporation (TransCo), the **OSG Provident Fund** is not a corporation and it is not registered with the Securities and Exchange Commission (SEC). It also has no Tax Identification Number and uses the TIN of the **OSG** in remitting taxes. The OSG Provident fund is a duly trusteed employees' trust fund established by the Office of the Solicitor General for the exclusive benefit of its officials and employees. The **Fund** is also contributory in that members contribute to the Fund a sum equal to 5% of their monthly salary and the OSG contributes an amount equal to five percent (5%) of each

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member's current monthly salary. [3] Lastly, the income of the fund is not used for any other purpose except for the exclusive benefit of the member-employees and their beneficiaries.

On December 16, 2008, the **OSG Provident Fund** was issued BIR Ruling No. (DA-(TSF-016) 542-08), which ruled:

> In reply, please be informed that a perusal of the Rules and Regulations governing the said Fund, disclosed the following:
>
> (1) It is an employees' trust fund established by the Office of the Solicitor General effective November 10, 2008, for the exclusive benefit of its officials and employees;
>
> (2) It is duly trusteed;
>
> (3) It is contributory. The members shall contribute monthly to the Fund a sum equal to 5% of their monthly salary and the OSG shall pay to the Fund as its monthly contribution an amount equal to five percent (5%) of each member's current monthly salary;
>
> (4) The fund is accumulated by the trust; and
>
> (5) The corpus or income of the fund is not used for or diverted to purposes other than for the exclusive benefit of the member-employees and their beneficiaries.
>
> In view thereof, this Office is of the opinion as it hereby holds that the OSG Provident Fund is an employees trust exempt from income tax under Section 32 (b) of the Tax Code, as amended and therefore, it need not file an income tax return; and that the income of the trust fund from its investments are exempt from income tax, provided, that in its investment activities, no part of the corpus or income of the fund shall be used for a diverted to purposes other than for the exclusive benefit of the member-employees or their beneficiaries. Moreover, the OSG Provident Fund is no longer subject to the 20% final tax on interest and/or yield on deposit substitute instruments and on interest on its Philippine Currency bank deposits. *(CIR vs. GCL Retirement Plan, G.R. No. 95022, March 23, 1993)*
>
> In addition, the income or earnings from investments of the Fund, *e.g.*, dividends, are taxable to the employee-member to the extent of the entire amount thereof, in the year so distributed, if the distribution is effected before his retirement from the company and that the income distributed shall not be diminished by the employee's personal contribution. Likewise, if the employee receives the OSG counterpart contributions plus earnings thereon before retirement, the entire amount is taxable to him in the year so distributed. Pursuant to Section 32 (b) (6) of the Tax Code, the benefits to be received from the OSG Provident Fund by the employee-members upon retirement in addition to and as part of their retirement gratuity from. OSG shall be exempt from income tax. This means that, upon retirement, the total benefits which the employee shall receive consisting of his

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personal contributions, the OSG counterpart contributions and the income of the Fund to which the employee is entitled and is distributed to him shall be exempt from income tax.

Specifically, you request:

1. for the clarification on the specific tax rate applicable to (1) the earnings or "dividends" distributed to Fund members prior to retirement and (2) the OSG counterpart contribution plus earnings thereon received prior to retirement; and

2. for the revalidation of the previously issued ruling that the Fund is no longer subject to the 20% final tax on interest and/or yield on deposit substitute instruments and on interest on its Philippine Currency bank deposits.

To reiterate, the **OSG Provident Fund** is exempt from income tax under Section 60 (B) in relation to Section 32 (B) (6) (a). Thus, the **Fund** is not subject to the 20% final tax on interest and/or yield on deposit substitute instruments and on interest on its Philippine Currency bank deposits.

The amounts distributed to members from income or earnings from investments of the **OSG Provident Fund** are taxable to the extent of the entire amount thereof in the year so distributed at a final withholding tax rate of ten percent (10%) pursuant to Section 57 in relation to Section 24 (B) (2) of the Tax Code, the dividends being passive income. The amounts distributed representing the OSG counterpart contribution received prior to retirement shall be considered as part of "other benefits" which is excludible from the gross compensation income of an employee pursuant to Section 32 (B) (7) (e) [4] of the Tax Code. However, if the OSG contribution to the **Fund** along with other benefits falling under the said provision exceeds the P82,000 ceiling, such excess shall be taxable to the employee receiving the benefits, in the year so distributed, under the rates prescribed under Section 24 (A) of the Tax Code in relation to the provisions of Revenue Regulations No. 2-98, as amended.

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,

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

Footnotes

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1. An Act to Strengthen the Office of the Solicitor General by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and Other Purposes.
2. Article 1, Section 2, Office of the Solicitor General Provident Fund By-Laws.
3. Article IV, *ibid.*
4. Republic Act (RA) No. 10653 increased the ceiling to P82,000 from P30,000.

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