November 19, 2018

BIR RULING NO. 1381-18

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 416-2012

Fonterra Brands Phils., Inc.
28th Floor Cyber One Tower
11 Eastwood Ave., Bagumbayan
Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 15, 2014 requesting for confirmation that the separation benefits to be given to the employees of Fonterra Brands Phils., Inc. (Fonterra for brevity) due to redundancy are exempt from income tax and consequently from withholding tax pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, as amended.

It is represented that Fonterra is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal place of business located at 28th Floor Cyber One Tower, 11 Eastwood Ave., Bagumbayan, Quezon City. It is duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. ASO95-10375 and was issued Taxpayer's Identification No. 000-000-000-000. Fonterra has undertaken an organizational review on its business priorities and which leads to a Redundancy Program which took effect last June 30, 2014. A total of thirty (30) employees were affected by the exercise and will be provided severance packages pending the completion of their exit clearance where they will be terminated on July 31, 2014 and the aforesaid employees are as follows:

Full Name	Position	Length of Service
BBB	_____	2.01
CCC	_____	3.17

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DDD	_____	0.74
EEE	_____	2.96
FFF	_____	12.01
GGG	_____	2.77
HHH	_____	2.93
III	_____	0.25
JJJ	_____	6.41
KKK	_____	4.13
LLL	_____	1.04
MMM	_____	3.17
NNN	_____	0.95
OOO	_____	2.01
PPP	_____	9.80
QQQ	_____	1.25
RRR	_____	10.49
SSS	_____	4.17
TTT	_____	1.88
UUU	_____	2.46
VVV	_____	4.17
WWW	_____	4.08
XXX	_____	1.40
YYY	_____	1.87
ZZZ	_____	3.45
AAAA	_____	1.00
BBBB	_____	5.87
CCCC	_____	6.99
DDDD	_____	1.70
EEEE	_____	2.42

In reply, please be informed that pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997, as amended, 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 due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall not be included in the gross income and shall be exempt from taxation under Title II of the same Tax Code. (BIR Ruling No. 416-2012 dated June 25, 2012)

The above-mentioned law requires the presence of two (2) conditions in order that the

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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.

Documents submitted show that Fonterra has already submitted an Establishment Termination Report with the Department of Labor and Employment-National Capital Region (DOLE-NCR, Quezon City Field Office) on June 27, 2014 with information that the above-enumerated employees have been terminated due to redundancy and that they have been duly notified of their termination.

Accordingly, the separation pay to be received by the retrenched employees as a result of their separation from the service is exempt from income tax and consequently from the withholding tax prescribed by Section 79 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 2-98, as amended by RR Nos. 6-2001 and 12-2001.

Moreover, 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.

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 Php30,000.00 threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of RR 2-98, as amended. (BIR Ruling Nos. 479-2014 dated December 3, 2014 and 416-2012 dated June 25, 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

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