May 19, 2021

BIR RULING NO. OT-172-21

Sec. 32 (B) (6) (f), Tax Code; BIR Ruling No. 612-18; BIR Ruling No. 363-12

AAA

Dear AAA :

This refers to your letter dated October 17, 2020 requesting for clarification on the taxability of retirement compensation given by LBP pursuant to its Separation Incentive Program (SIP) which was subjected to withholding tax.

Background

1. You were employed by the Land Bank of the Philippines ("LBP" or the "Bank") for twenty-five (25) years [1] until your retirement on April 1, 2019 at the age of sixty (60) years old. [2] The last position you held was Department Manager assigned in Pasay (Masagana) Branch.

2. You were in the government service for twenty-eight (28) years until you availed of LBP's SIP pursuant to Landbank Executive Order No. 119, Series of 2016.

3. The SIP allows LBP to enhance personnel demographics and improve overall work productivity and provide flexibility to retain key personnel and infuse fresh and critical talents by way of incentivizing the involuntary separation of employees with medical conditions and/or who are at least fifty-five (55) years of age and have been in the government service for at least twenty-five (25) years and with twenty (20) years of service with the Bank.

4. However, at the time of your retirement on April 1, 2019, you were already qualified to avail of the early retirement under Republic Act (RA) No. 8291.

5. Your application for retirement under RA No. 8291, effective on April 1, 2019 at age sixty (60) years, was approved by the Government Service Insurance System (GSIS). [3]

Copyright 2021 CD Technologies Asia, Inc.

In reply, please be informed as follows:

Separation under the SIP

Section 32 (B) (6) (b) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides that 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 is exempt from taxes regardless of age or length of service. The phrase "for any cause beyond the control of the said official or employee" in effect connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be of his own making. [4]

Thus, the separation of the LBP officials and employees identified and recommended by LBP to have met the criteria for SIP is involuntary based on medical grounds, and is a consequence of the Bank's continuing efforts to rationalize its organizational structure. Therefore, any and all amounts to be received by them as a consequence of their involuntary separation from the service of LBP is not subject to income tax imposed under Section 24 (A) of the Tax Code, as amended, and consequently to the withholding tax on wages pursuant to Section 79 of the same Code.

Separation under RA No. 8291

Section 32 (B) (6) (f) of the Tax Code, as amended, provides that benefits received from the GSIS under RA No. 8291, including retirement gratuity received by government officials and employees shall not be included in their gross income and shall be exempt from income tax. Under RA No. 8291 otherwise known as the "Government Insurance System Act of 1997," a member who retires from the government service after rendering at least fifteen (15) years of service and is at least sixty (60) years of age upon retirement, shall be entitled to the retirement benefits provided therein. [5] Furthermore, Section 39 of RA No. 8291 provides that the benefits paid by the GSIS shall be exempt from all taxes.

Your application for retirement under the SIP has become irrelevant in view of your application for retirement under RA No. 8291. Considering that your application for retirement under RA No. 8291 was approved by the GSIS, the retirement benefits you received from the GSIS under RA No. 8291, after retiring from the service at age sixty (60) years old and after having rendered twenty-five (25) years of service in the LBP, shall be excluded from gross income and shall be exempt from income tax. Moreover, the terminal leave pay, *i.e.*, the monetization of the unused vacation and sick leaves, shall also be exempt from income tax.

This ruling is being issued on the basis of the foregoing facts as represented.

Copyright 2021 CD Technologies Asia, Inc.

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,

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

Footnotes

1. Memo to VP, HRMG Joselito B. Vallada by SVP, South NCR Branches Group, Ramon R. Monteloyola, dated December 4, 2017.
2. Memo for SVP, South NCR Branches Group, Ramon R. Monteloyola by OIC Personnel Administration Department, Marites P. Mular, dated December 12, 2018.
3. Letter to AAA by GSIS on May 21, 2019.
4. Section 4 (f), Revenue Regulations (RR) No. 1-68 and Sec. 2 (b) (2), RR No. 6-82, as amended.
5. BIR Ruling No. DA-544-99 dated September 21, 1999.

Copyright 2021 CD Technologies Asia, Inc.