October 18, 2016

BIR RULING NO. 353-16

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 479-2014; BIR Ruling No. 416-2012

WorldPartner, Inc.
4/F IDC Dumex Bldg., E. Rodriguez Jr. Ave.
C-5, Libis, Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated March 15, 2016, as indorsed by the OIC-Assistant Revenue District Officer of RDO 40, Cubao, requesting for a certificate of tax exemption on the separation pay of its employees.

It is represented that WorldPartner, Inc. (WPI for brevity and with TIN 000-000-000-000) is a corporation duly organized and existing under the laws of the Philippines with principal place of business at 4/F IDC Dumex Bldg., E. Rodriguez Jr. Ave., C-5, Libis, Quezon City. Three (3) of its employees will be separated from employment by reason of termination of WPI's BPO contract with Scalepoint Technologies, *viz.*:

	Name	*TIN*
1.	BBB	TIN-000-000-000-000
2.	CCC	TIN-000-000-000-000
3.	DDD	TIN-000-000-000-000

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

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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 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.

Submitted documents show that WPI has already informed the Department of Labor and Employment (DOLE-NCR, Quezon City Field Office) on May 25, 2016 thru Establishment Termination Reports stating that the afore-mentioned employees have been separated from employment due to termination of WPI's BPO contract with Scalepoint Technologies and that the said workers 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 Php82,000.00 [1] 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,

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(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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