March 12, 2018

BIR RULING NO. 453-18

RR 2-98; RMC No. 72-04; RMC 84-12;
000-00

R.G. Manabat & Co.
The KPMG Center, 9F
6787 Ayala Avenue, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 5, 2014, requesting on behalf of your client, **Philippine Life Insurance Association ("PLIA")** with Tax Identification No. 000-000-000 and office address at Suite 54, Legaspi Suites, 178 Salcedo Street, Legaspi Village, Makati City, for confirmation that the interest payments on loans (that are not securitized, assigned or participated out) to life insurance companies by borrowers who are among the top 20,000 private corporations remain subject to 2% Creditable Withholding Tax (CWT) under Section 2.57.2 (M) of the Revenue Regulations (RR) No. 2-98, as amended.

It is represented that **PLIA** is the umbrella organization of life insurance companies operating in the Philippines. One of the purposes of **PLIA** is to act as the vehicle through which problems and issues common to the life insurance industry in general may be threshed out, determined and resolved in the interest of all the member companies.

The life insurance industry is engaged in providing financial security as well as savings and investment instruments for the Filipino individuals and their families. Life insurance companies help manage their risk. In exchange for a constant stream of premiums, life insurance companies offer to pay consumers a sum of money upon the occurrence of a predetermined event. These premium payments are in turn being invested by life insurance companies in low risk investments such as government issued bonds or securities and by offering low risk loan facilities. The said investments notwithstanding, life insurance companies maintain more than enough reserve to respond to claims.

As part of their investment activities, life insurance companies extend loans to

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corporate borrowers at competitive rates. The loans are extended to single borrowers, and are not securitized, assigned or participated out. The income of these loans is reported by the life insurance companies as part of gross income subject to 30% regular corporate income tax.

Based on the foregoing, your request confirmation that the interest payments on loans (that are not securitized, assigned or participated out) extended by life insurance companies to borrowers who are among the top 20,000 private corporations remain subject to 2% CWT under Section 2.57.2 (M) of RR No. 2-98, as amended.

In support of your request, you submitted the following documents, to wit:

1. Certified true copy of the Articles of Incorporation and By-Laws of **PLIA**;

2. Loan Agreement; and

3. Special Power of Attorney authorizing R.G. Manabat and Co. through AAA to file the instant request for ruling.

In reply thereto, please be informed that Section 2.57.2 (M) of RR No. 2-98, provides:

> "***SECTION 2.57.2. Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon***. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> ***(M) Income payments made by the top twenty thousand (20,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax***. — Income payments made by any of the top twenty thousand (20,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines.
>
> Supplier of goods — One percent (1%)
>
> Supplier of services — Two percent (2%)"

Under **Revenue Memorandum Circular (RMC) No. 72-04** dated 6 November 2004, the Commissioner of Internal Revenue (CIR) clarified that interest payments on loans are payments for services rendered, to wit:

> "**A19**. Only the interest payments on loans, service fees and other charges

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considered as income are considered payment for services rendered, hence, subject to 2% EWT. Payment corresponding to the principal amount is not subject to EWT."

Likewise, in **RMC 84-2012 dated 21 December 2012**, the CIR explained the proper tax treatment of interest income earnings on loans that are not securitized, assigned or participated out, as follows:

"Interest income received by banks from payors belonging to the Top Twenty Thousand (20,000) Corporations strictly arising from individual loans obtained from banks that are not securitized, assigned or participated out remains to be subject to Creditable Withholding Tax (CWT) at the rate of two percent (2%). Corollarily, interest income paid by banks designated as Top Twenty Thousand (20,000) Corporations strictly arising from loans made to such banks that are not securitized or participated out remains to be subject to CWT at the rate of two percent (2%). (Section 57 [B] of the Tax Code, as amended, in relation to Section 2.57.2 [M] of Revenue Regulations No. 2-98, as amended)"

As stated in **RMC No. 59-2008** dated 23 August 2008, investment income realized by life insurance companies from funds obtained from others and invested in financial products, such as a loan, is considered income earned from performing a quasi-banking activity or similar activity, to wit:

"***(3) Investment Income*** —

xxx xxx xxx

"***(3.b) Investment Income Realized from the Investment of Funds Obtained from Others***. — The income earned by the life insurance company whereby it uses the funds solicited and pooled from its policy holders to invest in various marketable securities, instruments, other financial products and in real estate, which funds are recognized as liabilities by the life insurance company and which can be withdrawn by the policy holders anytime is **considered an income earned from performing a quasi-banking activities or similar banking activities**, thus, subject to the gross receipts tax imposed under Sec. 121 of the Tax Code, as amended. (Emphasis Supplied)"

In the instant case, life insurance companies and banks are similarly situated in that both provide loans to investors and infuse the needed funds to the capital markets. Hence, interest income of life insurance companies should be taxed similarly with the interest income received by banks from loans that are not securitized, assigned or participated out. Indeed, taxing the interest income of life insurance companies differently than that of banks would violate the equal protection clause well enshrined under the Constitution.

SUCH BEING THE CASE, this Office holds that the interest payments on loans that are not securitized, assigned or participated out, extended by life insurance

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companies to borrowers who are among the top 20,000 private corporations are subject to 2% Creditable Withholding Tax under Section 2.57.2 (M) of RR 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 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

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