April 30, 2018

BIR RULING NO. 752-18

Sec. 60 (B) 1997 Tax Code; BIR Ruling No. 076-2012

Manila International Airport Authority
Provident Fund Association, Inc.
Ninoy Aquino International Airport
NAIA Road, Pasay City

Attention: *AAA*

Gentlemen :

This refers to your letters dated 12 May 2010 and 30 April 2013 requesting Certificate of Tax Exemption on the interest income derived by the **Manila International Airport Authority ("MIAA") Provident Fund Association, Inc.** from its investment in the Special Time Deposit Account offered by the Central Bank of the Philippines through its depository bank, Bank of Commerce. Furthermore, you also request for exemption from value-added tax on the premiums paid to Value Care Health Systems, Inc. for the medical insurance which the latter provides to your members.

In reply thereto, please be informed that Section 60 (B) of the Tax Code of 1997 provides that:

> *"Sec. 60 (B). Exception. — The tax imposed by Title II shall not apply to employees' trust which forms part of a pension, stock bonus, or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees. . ."*

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The above-cited provision lays down the following requirements in order that the earnings of a retirement fund may be exempt from income tax, to wit: 1) the contributions are made to the trust by the employer, or employees, or both; 2) such contributions are made for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and 3) under the trust instrument it is impossible (in the taxable year and at any time thereafter prior to the satisfaction of all liabilities with respect to employees under the trust) for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees. It is noted that the foregoing conditions are present in **MIAA Provident Fund**, thus, it is exempt from income tax. Since the final tax and the withholding thereof are embraced within the title on "Income Tax," it follows that said trust is exempt from the coverage of the withholding tax regulations.

In the case of *Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 95022*, promulgated on March 23, 1992, the Supreme Court upheld the judgment of the respondent Court of Appeals in affirming the decision of the Court of Tax Appeals, which ruled:

> *". . . it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act (R.A.) No. 4917 approved on June 17, 1967. This law specifically provided.*
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> *Sec. 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plans maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;"*
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> xxx xxx xxx
>
> *"And rightly so, by virtue of the raison de'etre behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.*
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> *The tax advantage in R.A. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of*

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the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

"Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." (Congressional Record, HIouse of Representatives, Vol. IV, Part 2, No. 57, p. 1859, May 3, 1957; cited in Commissioner of Internal Revenue vs. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968, 23 SCRA 715).

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intent of the law."

xxx xxx xxx

"There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56(b), now Sec. 53(b), Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

xxx xxx xxx"

In view of the foregoing, interest income derived by **MIAA Provident Fund** from its investment in the Special Time Deposit Account being offered by the Central Bank of the Philippines remains exempt from the final withholding tax pursuant to Section 60 (B) of the Tax Code of 1997, as amended. Provided, however, that in its investment activities, no part of the corpus or income of the Fund shall be used for or diverted to purposes other than for the exclusive benefit of the member-employees/officials or their beneficiaries. *(BIR Ruling No. 076-2012 dated February 15, 2012)*

As regards the request for VAT exemption, please be informed that the tax exemption provided under Section 60 (B) of the 1997 Tax Code, as amended, in favor of the employees' trust funds covers only the income tax. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others consistent with the maxim *"expressio unius est exclusio alterius,"* in statutory construction, if a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. [1] Thus, the express mention of the exemption from the payment of income tax excludes exemption from all other taxes such as

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VAT. Accordingly, **MIAA Provident Fund's** purchase of goods or services shall still be subject to the 12% VAT pursuant to Sections 106 and 108 of the 1997 Tax Code, 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

1. *Tolentino vs. Paqueo*, 523 SCRA 377.

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