December 9, 2019

BIR RULING NO. 770-19

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 555-2012; BIR Ruling No. 114-2012; BIR Ruling No. 199-2011

Standard Chartered Bank
Standard Chartered Bank Bldg.
6788 Ayala Avenue, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 11, 2014 stating that Standard Chartered Bank (TIN 000-000-000-000) is a company incorporated in England by Royal Charter with reference number ZC 18 and with principal office at 1 Basinghall Ave. London, EC2V 5DD. It is authorized by the Bangko Sentral ng Pilipinas (BSP) to carry on the business of commercial banking through its Philippine Branch. Due to global business changes and developments, the bank has embarked on a global initiative aimed at re-channeling resources to achieve better governance and improve internal efficiencies and better services. In this connection, the Bank has decided to outsource to a third party service provider several activities of the Corporate Real Estate Services Department (CRES), thereby resulting in personnel becoming in excess of the bank's operational requirements and being involuntary separated on the ground of redundancy.

Below is the list of Standard Chartered Bank's employees that will be separated from employment:

No.	Name of employee	TIN
1	BBB	000-000-000
2	CCC	000-000-000
3	DDD	000-000-000
4	EEE	000-000-000
5	FFF	000-000-000
6	GGG	000-000-000
7	HHH	000-000-000

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the Establishment Employment Report was duly received by DOLE-NCR on June 3, 2014. The corresponding notices of termination of employment and the draft computation of the employees Special Separation Package (SSP) were all served on May 30, 2014.

You now request for a confirmation of opinion that:

a) The separation benefits including retirement and the entire amount thereof shall be given to the separated employees are exempt from income tax and, consequently, from withholding tax pursuant to Section 32 (B) (6) (b) of the Tax Code.

b) The 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 pursuant to Section 2.78.1 (A) (7) of RR 2-98, as amended;

c) The cash equivalent of vacation leave exceeding ten (10) days is subject to tax pursuant to Section 2.78.1 (A) (7) of RR 2-98, as amended; and

d) The payment to the employee of their salaries and the payment of the 13th month pay and other benefits in excess of Php30,000 threshold is subject to tax under Section 2.78.1 (A) (3) (a) and (A) (7) of RR 2-98, as amended.

In reply, please be informed 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 because of 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 pursuant to Section 32 (B) (6) (b) of the Tax Code of 1997. The phrase "for any cause beyond the control of the said official or employee" connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be asked for or initiated by him. The 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 heir as a consequence of such separation.

Accordingly, this Office hereby holds that any and all amounts to be received by the above-listed employees of Standard Chartered Bank as a consequence of the implementation of its redundancy program are exempt from income tax and consequently from the withholding tax prescribed by Sec. 79, Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations (RR) No. 2-98, as amended. The payment of salaries, however, is subject to income tax and consequently to withholding tax.

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Moreover, pursuant to Section 2.78.1 (A) (7) of RR 2-98, as amended, 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. (BIR Ruling No. 199-11 dated June 29, 2011)

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 No. 555-12 dated September 6, 2012)

It is to be noted that the separation of the afore-named employees from the service must be the direct result of the aforesaid redundancy of Standard Chartered Bank and not due to the employee's qualification to the compulsory/optional retirement program of the company.

Finally, the expenses incurred by Standard Chartered Bank in providing the separation benefits are deductible from its gross income for being an ordinary and necessary trade or business expense pursuant to Section 34 (A) (1) (a) (i) of the Tax Code of 1997. (BIR Ruling No. 114-2012 dated February 22, 2012)

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 as null and void.

Very truly yours,

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

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