

Headline	Making separation a less taxing situation		
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# Making separation a less taxing situation

TOP OF MIND



**IVY DIANNE M. GALZOTE**

As we start to feel the cold breeze of February and while little cupid is busy wandering around with his bow and quiver of arrows looking for a perfect match, the Bureau of Internal Revenue (BIR) has come up with something to ease the aching hearts of employers and their separated employees due to causes beyond their control.

Pursuant to Section 32(B)(6) (b) of the Tax Code of 1997, as amended, the amount of separation benefits an employee receives as a consequence of separation from service because of death, sickness or other physical disability or for any cause beyond the control of the employee, shall be exempt from tax. Accordingly, no withholding taxes shall be deducted from the separation benefits and the entire amount shall be given to the entitled separated employee.

In 2011, the BIR issued Revenue Memorandum Order (RMO) No. 26-2011 to provide guidelines on the processing of the issuance of a Certificate of Tax Exemption for separation ben-

efits received by employees on account of their separation from employment due to death, sickness or other physical disability, while the processing of request for rulings for the amounts due to any other causes beyond the control of the said official or employee shall continue to be processed at the law division in the national office.

In addition thereto, RMO 26-2011 was further amended by RMO 36-2011, to include the Large Taxpayers Service in the processing of the Certificate of Tax Exemption. Without the certificate, an employer is required to deduct withholding taxes and remit the same to the BIR. The drawback then falls to the employee as recovery of the withheld taxes can only be made through an application for a tax refund.

Late in 2016, the BIR issued RMO 66-2016 dated Dec. 6, 2016, further amending RMO 26-2011, to delegate also to the Revenue District Office (RDO) or appropriate Large Taxpayer (LT) Office where the employer is registered the processing of requests for tax exemption of separation benefits received by an employee due to other causes beyond his control. It also

prescribed the guidelines and documentary requirements for request for tax exemption. The issuance of this RMO made the request for tax exemption more convenient and less grueling for both the employer and the employee.

The RMO also listed other causes beyond the control of the employee such as, but not limited to, retrenchment, redundancy, installation of labor-saving devices, and closure of business. For the cases mentioned, the general documentary requirements are:

a. Written notice to the employee and the appropriate regional office of the Department of Labor and Employment (DOLE) at least 30 days before effectivity of termination, specifying the ground for termination.

b. Board Resolution, in case of a juridical entity, or a sworn affidavit to be executed by the owner, in case of a sole proprietor.

For a redundancy case, there is also an additional requirement of adequate proof of redundancy, but

not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring. Furthermore, the BIR may still require other supporting documents to prove the entitlement to tax exemption of the above prevailing circumstances.

Unlike before when a taxpayer would wait for a lengthy period of months, sometimes years, before a confirmatory ruling is issued, the BIR now extends its hands to the taxpayers through the issuance of a certificate of tax exemption.

It is definitely a great relief for employers and separated employees to escape a taxing situation.

Ivy Dianne M. Galzote is a supervisor from the tax Group of KPMG R.G. Manabat & Co. (KPMG RGM&Co.), the Philippine member firm of KPMG International. KPMG RGM&Co. has been recognized as a Tier 1 tax practice, Tier 1 transfer pricing practice, Tier 1 leading tax transactional firm and the 2016 National Transfer Pricing Firm of the Year in the Philippines by the International Tax Review.

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