

Tax in a dot

Revised regulations on private retirement benefit plan



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Revised regulations on private retirement benefit plan

The Bureau of Internal Revenue (BIR) has released revised policies and guidelines on the taxability of retirement benefits received by employees under a reasonable private retirement benefit plan.

Reasonable private retirement benefit plan

A private retirement benefit plan (Retirement Plan) refers to an agreement whereby an employer provides benefits to its officials and employees upon the latter's retirement.

Tax Qualified Plan and its requirements

A Retirement Plan, which is duly approved by the BIR and was issued a certificate of tax qualification for tax exemption (Tax Qualified Plan), are entitled to the following tax incentives or privileges:

- (a) Retirement benefits received by employees from private companies are exempt from income tax and, consequently, from withholding tax.
- (b) Income earned by an employee's trust from various investments is also exempt from income tax. If the trust earns income from selling stocks listed on local exchange, then it is still subject to stock transaction tax.
- (c) Employers can deduct certain contributions to retirement trusts from their gross income:
 - a. Contributions to cover that year's pension liability (normal cost)
 - b. Contributions to the trust during the taxable year in excess of the normal cost but only if such amount (1) has not been allowed as a deduction, and (2) is apportioned in equal parts over a period of 10 consecutive years, beginning with the year in which the transfer or payment is made.

To avail of the tax incentives/privileges above, the following requirements must be met:

- (a) The Retirement Plan must be reasonable as determined by the Commissioner of Internal Revenue or his authorized representatives.
- (b) The retiring official or employee must have been in the service of the same employer for at least 10 years, and is not less than 50 years of age at the time of retirement.
- (c) The retiring official or employee shall not have previously availed of the privilege under a retirement benefit plan of the same or another employer.

If an employee transfers from one company to another within the same multiemployer retirement plan due to a valid merger, their cumulative years of service with both companies will count toward the required 10-year period. This applies as long as there was no separation pay from their previous employer.

The tax incentives or privileges under a Tax Qualified Plan shall retroact from the date of effectivity of the Retirement Plan.

Application for a Certificate of Qualification for Tax Exemption

The employer shall apply with the BIR, through the Legal and Legislative Division at the National Office, for the issuance of a certificate of qualification for tax exemption of the employee retirement benefit plan (Certificate of Qualification) within 30 days from the date of effectivity of the retirement benefit plan; otherwise, a penalty shall be imposed upon the employer. The issued Certificate of Qualification shall be valid until revoked by the BIR.

The regulations also provide the requirements for trustee Retirement Plan, non-trustee/insured Retirement Plan and multiemployer plans.

Pending the employer's application with the BIR, the retirement benefits received by qualified retiring employees or investment income earned by the Retirement Fund will be exempt from income tax and, consequently, from withholding tax. However, if the application is denied, the employer or the trust will be directly and solely liable for any deficiency income taxes due on the same.

Amendments to the Tax Qualified Retirement Plan

During the operation period of the retirement plan, amendments can be made, given that they are submitted for certification to ensure that they do not impact its qualification. If the amendments are found to benefit the employee-members, an amendatory certification of qualification shall be issued upon payment of the corresponding fee prescribed in these regulations.

Investments made by the trustees of an employee's trust

The law does not specify limitations on the types of investments the trustees of an employee's trust can make. Generally, the trustees are allowed to use the fund to purchase any investments allowed by the trust agreement. However, the exemption of the trust income under Section 60 (b) of the Tax Code, may be denied if the trust:

- (a) Lends any part of its income or corpus without adequate security and a reasonable interest rate;
- (b) Pays any compensation in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered;
- (c) Makes any part of its services available on a preferential basis;
- (d) Makes any substantial purchase of securities or any other property for more than adequate consideration in money or money's worth;
- (e) Sells any substantial part of its securities or other property for less than an adequate consideration in money or money's worth; or
- (f) Engages in any other transaction which results in substantial diversion of its income or corpus

to or from the employer—if the employer is an individual—to or from a member of the family of the employer, or to or from a corporation controlled by the employer through the ownership, directly or indirectly, of 51% or more of the total combined voting power of all.

For the avoidance of doubt, the retirement fund shall not be used to invest or deposit in any of the employer's business ventures to maintain the separation of the employee's trust fund from that of the employer's trust.

Filing of returns

Trustees of all trustee Retirement Plans are required to file an annual information return, together with a copy of the issued Certificate of Qualification, on or before 15 April of each year with the Revenue District Office having jurisdiction over the employer. The submissions shall be subject to post-audit by the BIR.

On the other hand, insurance companies as insurers or custodian of funds of non-trusteed or insured plans (e.g., Retirement Plan established and maintained by an employer under a Deposit Administration Contract or Deferred Annuity Contract, as the case may be and approved by the BIR under Republic Act No. 4917), should continue to file the regular income tax returns (not the aforementioned annual information return) for income or earnings derived from investments of the covered employees' retirement fund which are subject to income tax.

Please see attached Revenue Regulations (RR) No. 15-2025 for your reference.

Get in touch

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