

## **PSALM ADVISORY ON DAMA CLAIMS & INTEREST CUT-OFF**

### **Role of PSALM in the Settlement of DAMA<sup>1</sup> claims**

The role of PSALM is to provide the funding needed to settle the DAMA claims in accordance with the computation validated by the Commission on Audit (COA) and pursuant to the latest Resolution of COA dated 10 September 2020, officially received by PSALM's legal counsel on 29 September 2020. PSALM was not the employer of the DAMA claimants and had nothing to do with the termination of the DAMA claimants. Since PSALM was not the employer of the DAMA claimants, obviously the employment records of the DAMA claimants are not with PSALM.

NPC being the former employer of the DAMA claimants, will handle the release of the payments to the DAMA claimants. Hence, specific arrangements for and scheduling of the release of payments to settle the claims are matters that NPC will handle, and any questions relative to the same will have to be taken up with NPC.

The DAMA claimants must note that in the preparation of the lists of claimants jointly submitted by PSALM and NPC to COA, PSALM generally relied on NPC to generate the employment details of the DAMA claimants based on NPC's employee records. The lists of claimants were prepared by NPC based on certain requirements of NPC and then forwarded to PSALM. PSALM then reviewed the lists of the claimants to determine who were those that filed claims with the COA to ascertain compliance with the Supreme Court's Resolution dated 21 November 2017, which required the filing of petition for money claim with COA. PSALM also shared the lists to the Civil Service Commission to inquire if the names on the list were rehired into any government office or agency from 27 June 2001 to 14 September 2007 or date of retirement. Therefore, if there are any claimants whose names are not found on any of the joint lists of NPC and PSALM submitted to COA, then such matter should be taken up by those claimants with NPC, and not with PSALM, so that employment records can be reconciled with NPC.

### **PSALM's Funding Process**

The funding for the DAMA claims was not included in the 2020 budget of PSALM because the specific amount was still uncertain until COA issued its latest Resolution dated 10 September 2020 and the validated computation of claims, the latest of which was received by PSALM from COA only on 26 October 2020. In accordance with the rule for government offices that the disbursement or disposition of government funds should

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<sup>1</sup> National Power Corporation Drivers and Mechanics Association (DAMA) et al. vs. NPC, G.R. No. 156208

bear the approval of the proper officials and it should be made pursuant to an appropriation or approved budget, the approval of the PSALM Board of Directors of the supplemental budget for the settlement of the DAMA claims is absolutely necessary. To disburse any funds for an expense that is not in the budget or in a supplemental budget is illegal.

Thus, upon the receipt of the COA Resolution dated 10 September 2020, PSALM immediately submitted the matter to the PSALM Board Review Committee for review of the supplemental budget to cover the DAMA claims. Thereafter, the matter was endorsed to the PSALM Board of Directors.

Today, 28 October 2020, the PSALM Board of Directors verbally approved the request for a supplemental budget. The next step is for the PSALM Corporate Secretary to prepare the written Board Resolution approving the supplemental budget and circulate the same for the signature of the PSALM Board of Directors (DOF, DOE, DOJ, DBM, NEDA, DTI and PSALM). The duly signed Board Resolution is a requirement of the DBM for the supplemental budget.

Once the Board Resolution has been signed by all the Directors, such resolution shall be submitted by PSALM to the DBM (together with PSALM's supplemental budget) as compliance with the DBM's process for approval of supplemental budget. It is the policy of DBM to require the submission and approval by DBM of a supplemental budget.

Simultaneous to PSALM's coordination with the DBM, PSALM will secure from the Development Bank of the Philippines the needed loan to cover the settlement of DAMA claims.

As soon as PSALM gets the approval of DBM on the supplemental budget, PSALM will then remit to NPC the funds to settle the DAMA claims. On the time line, if PSALM is able to immediately obtain the signatures of PSALM's Directors on the Board Resolution and the subsequent approval by DBM of the supplemental budget, then PSALM estimates that PSALM may be able to remit the funds to NPC by 16 November 2020.

### **PSALM Business Process for the Release of Funds to NPC**

PSALM prepared a Business Process that needs to be followed for the orderly release to NPC of funds for the DAMA Claims, and such Business Process is based on the COA rules and the best practices of other government agencies in the release of financial claims or benefits. It is incumbent upon PSALM to ensure that the payments are actually released to the correct DAMA claimants and there will be no issues later on relative to such releases. Ultimately, the PSALM Business Process is for the protection of the interests of DAMA claimants so that the payments do not fall in the wrong hands. In the

COA orders and SC Decision, there is nothing indicated therein that prohibits PSALM or NPC from coming up with a reasonable process and protocol for the orderly release of funds and the settlement of DAMA claims.

The PSALM Business Process has already been approved by the PSALM Board as of 28 October 2020 and will thus be formally transmitted to NPC.

### **DAMA Claimants Whose Names Are Not in the NPC-PSALM Joint List and in the COA Validated Lists**

DAMA claimants whose names are not in any of the joint lists of NPC and PSALM will have to coordinate directly with NPC because all lists were generated by NPC. As mentioned above, PSALM has no employee records of the claimants.

DAMA claimants whose names are not in any of the validated lists released by COA will have to coordinate directly with COA.

Settlement of claims will be based on the COA's validated lists. If there are any questions or issues with the figures in the validated lists of COA, such questions or issues should be taken up directly with COA.

### **Computation of the DAMA Claims and Statutory Deductions**

Settlement of the DAMA claims is subject to the deduction of withholding tax and other statutory deductions. COA, in its letter dated 11 September 2020, categorically stated that, "Finally, as with any money judgment, it is subject to lawful deductions such as but not limited to any applicable withholding tax and other mandatory deductions. With respect to the issue of COA Disallowances against some of the claimants, if the disallowance has not attained finality, then there is as yet no basis to withhold or deduct the amount of disallowance." Beyond doubt, withholding tax and statutory deductions will have to be deducted to comply with existing laws. If there is any question or issue as to why COA allowed these deductions in its letter dated 11 September 2020, then such question or issue will have to be taken up directly with COA.

### **Manner and Scheduling of Release of Payments to DAMA Claimants**

PSALM's role, as mentioned above, is to provide funding for the DAMA claims. The specific manner and scheduling of the release of payments to the DAMA claimants are matters that NPC will have to take care of. Considering the COVID-19 pandemic, IATF Guidelines on social distancing will have to be followed. Thus, PSALM trusts that NPC will make the appropriate arrangements that would ensure that release of the settlement of the DAMA claims will not violate any of the IATF Guidelines. Any questions

relative to the manner and scheduling of the release of payments should be referred to NPC.

### **Interest & Cut-off of the Interest**

The computation of the interest will follow the COA validations as well as any subsequent advice that PSALM may secure from COA. **Since we anticipate that funding will be made available by PSALM by 16 November 2020, the cut-off of the computation of interest will be as of 16 November 2020.**

It has always been the position of PSALM that the termination of the DAMA claimants and the delay in the resolution of the case were **not** caused by PSALM or attributable to PSALM's fault and so PSALM should not be further penalized by absorbing the interest. If PSALM had received the COA orders sooner, PSALM would have been able to process the funding of the claim sooner.

As to the delays caused by the exhaustion of the legal remedies made available by existing laws, it is important for the DAMA claimants to understand that it is absolutely legal to avail of the said remedies.

In the case of *Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo*<sup>2</sup>, the Supreme Court held that the government cannot be required to pay interest in the absence of statutory provision clearly directing or authorizing the payment of interest, *to wit*:

*“We agree, however, with the Solicitor General that the Court of Tax Appeals erred in ordering the payment of interest on the amount to be refunded to respondent herein. In the absence of statutory provision clearly or expressly directing or authorizing such payment, and none has been cited by the respondent. The National Government cannot be required to pay interest. So much the decision appealed from as requires the payment of interest should, therefore, be eliminated.”*

The foregoing case was cited by COA in its Decision No. 2017-110 dated 26 April 2017 when it clarified that pursuant to Sections 85 and 86 of Presidential Decree No. 1445, legal interest cannot be awarded in the absence of funds duly appropriated for such purpose.

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<sup>2</sup> G.R. No. L-12127, 25 May 1959

## **PSALM's Petition for Review in the Supreme Court**

PSALM pursued the filing of a petition for review in the Supreme Court because according to PSALM's statutory counsel, such filing of a petition for review is a legal remedy that can be validly availed of under the 2009 Revised Rules of Procedure of COA and the Rules of Court. Despite the filing by PSALM of the petition for review, PSALM has been working on the steps necessary to pass the supplemental budget and secure the funding needed to pay the DAMA claims. This is because based on the said COA Rules, the decision of the COA is **executory** after the lapse of 30 days from notice. As mentioned above, PSALM's counsel officially received the COA decision on 29 September 2020.

## **Next PSALM Advisory**

PSALM will issue an updated Advisory on 16 November 2020 to report on the status as of such date. Meanwhile, we received reports that there are people spreading false or misleading information about the processes of PSALM. We encourage everyone to be mindful of your sources of information. Do not fall prey to unscrupulous individuals who may want to extort or solicit money from the DAMA claimants with the false representation that they can get preferential treatment. Sufficient funding will be provided by PSALM pursuant to the validated lists of COA.

**PSALM MANAGEMENT**

Issued this **28 October 2020** in Quezon City, Philippines