REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 40(C)(2) & 6(c), Tax Code
BIR Ruling No. 496-14 BIR Ruling No. 555-12
OT 1024-2022
JAN 21 2022

Monde M.Y. San Corporation
534 Gracia Street, Barangay Sto Domingo
Cainta, Rizal 1900

Attention: **Ms. Maritess D. Ong**
HRDA Manager

Gentlemen:

This refers to your letter requesting on behalf of **Monde M.Y. San Corporation** ("Monde") for opinion on the following:

1) If the retiring employee is at least fifty (50) years old and has rendered at least ten (10) years of service, is the special retirement benefit of 45 days exempted from withholding and income taxes or only the equivalent of 22.5 days?

2) If the retiring employee is at least sixty (60) years old and would want to avail of Monde's early retirement program, is the whole special retirement benefit, regardless of the amount, exempted from withholding tax or only the equivalent of 22.5 days?

As represented, Monde offers Early Retirement Program to its regular employees who are at least fifty (50) years old and not more than sixty (60) years old and have rendered at least ten (10) years of service, equivalent to Forty-five (45) days per year of service. This Early Retirement Program aims to help Monde's employees to retire early to have more time for their love ones or to start a new career or business.

Monde has an approved retirement plan[1] which states that an employee may avail of the early retirement program at the age of fifty (50) wherein he will be granted the retirement benefit in accordance with the law, that is, equivalent to 22.5 days per year of service.

[1] BIR Ruling No. ERP-246-2012 dated March 20, 2012.

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In reply, please be informed that Section 32 (B) (6) (a) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides, viz.:

"Section 32. Gross Income. –

(B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

x x x x x x x x x

(6) Retirement Benefits, Pensions, Gratuities, etc. –

(a) Retirement benefits received under R.A. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, that the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: . . ., shall not be included in gross income and shall be exempt from taxation."

For both issues raised, since Monde has an approved reasonable retirement benefit plan, the retirement benefits that will be received by its retiring employee shall be exempt from income tax, provided that the employees meet two (2) conditions: (1) the employee had been in the service of the same private firm for at least ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement.

Hence, if the retiring employee is at least sixty (60) years old but has not been in the service of Monde for at least ten (10) years at the time of his retirement, the retirement benefits that he will receive shall not be exempt from income tax.

Moreover, pursuant to Section 2.78.1 of Revenue Regulations (RR) No. 2-98, as amended, the terminal pay, i.e., 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.

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It is, however, understood that this exemption does not include the payment of the retiring employees' salaries, except if minimum wage earners, and the payment of the 13th month pay and other benefits in excess of the Php90,000.00[2] threshold which shall be subject to income tax, and consequently to withholding tax, under Section 2.78.1 (A)(3)(a) and (A)(7) of RR No. 2-98, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[2] Republic Act No. 10963 increased the threshold from Php82,000 to Php90,000 effective January 1, 2018.