December 9, 2019

BIR RULING NO. 771-19

Section 32 (B) (6) (b), 1997 NIRC; BIR Ruling No. 479-2014; BIR Ruling No. 416-2012

Eli Lilly (Philippines), Inc.
Units 401-403 Tower 1
Rockwell Business Center
Pasig City

Attention: *AAA*

Gentlemen:

This refers to your letter dated December 11, 2014 requesting for an opinion on the non-taxability of the severance benefits package to be received by twenty (23) of your employees who will be separated from service due to a redundancy program of Eli Lilly (Philippines), Inc. pursuant to Sec. 32 (B) (6) (b) of the 1997 Tax Code, as amended.

Documents submitted show that Eli Lilly (Philippines), Incorporated (Eli Lilly for brevity) is a domestic corporation engaged in the business of providing innovative and health care solutions through pharmaceutical products. It is duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. 19552 and was issued Taxpayer's Identification No. 000-000-000-000.

Pursuant to a long standing business partnership between their respective parent corporations based abroad, Eli Lilly used to be responsible for, among others, the promotion and sale of various health care and pharmaceutical products of its local partner Boehringer Ingelheim Philippines, Inc. (Boehringer) such as Tragenta and Trajenta Duo (collectively, Trajenta). In this regard, Eli Lilly employed District Sales Managers (DSM) and Sales Representatives (SR) who were assigned to promote and sell solely Trajenta products in the Philippines.

In October 2014, however, Eli Lilly received a global directive from Boehringer's parent corporation, Boehringer Ingelheim Gmbh (Boehringer GMbh) that Boehringer will now take-over solely the promotions and sales of its Trajenta products in the Philippines effective January 1, 2015. It was determined that the foregoing change will streamline the operations of both Eli Lilly and Boehringer and make them more effective and efficient in

Copyright 2020 CD Technologies Asia, Inc.

dealing with customers and patients that they serve.

As consequence of implementation of the global directive of Boehringer Gmbh, the positions and functions of Eli Lilly's DSMs and SRs who were assigned to promote and sell Trajenta products were rendered superfluous and no longer necessary as their former functions were assumed by the respective representatives of Boehringer. Thus, in rationalizing the organizational structure of Eli Lilly and ensuring the viability of its operations, Eli Lilly was constrained to undergo a redundancy program concerning the affected DSMs and SRs.

While Eli Lilly's thrust was to minimize severance of employment, the following DSMs and SRs were identified and terminated due to redundancy by taking into consideration, among others, the positions and geographical assignments that were no longer necessary, as well as their past performance and length of service:

Name	Position
BBB	Sales Representative
CCC	District Sales Manager (STA)
DDD	Sales Representative
EEE	Sales Representative
FFF	Sales Representative
GGG	Sales Representative
HHH	Sales Representative
III	Sales Representative
JJJ	Sales Representative
KKK	Sales Representative
LLL	Sales Representative
MMM	Sales Representative
NNN	Sales Representative
OOO	Sales Representative
PPP	Sales Representative
QQQ	District Sales Manager
RRR	District Sales Manager
SSS	Sales Representative
TTT	Sales Representative
UUU	Sales Representative
VVV	Sales Representative
WWW	District Sales Manager
XXX	Sales Representative

In reply, please be informed that pursuant to Section 32 (B) (6) (b) of the Tax

Copyright 2020 CD Technologies Asia, Inc.

Code of 1997, as amended, 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 due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall not be included in the gross income and shall be exempt from taxation under Title II of the same Tax Code. (BIR Ruling No. 416-2012 dated June 25, 2012)

The above-mentioned 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 heirs as a consequence of such separation.

Submitted documents show that Eli Lilly has already informed the Department of Labor and Employment (DOLE-NCR) on November 21, 2014 thru Establishment Termination Reports stating that the above-enumerated employees have been separated from employment due to reorganization/downsizing and that they have been duly notified of their termination.

Accordingly, the separation pay to be received by the retrenched employees as a result of their separation from the service is exempt from income tax and consequently from the withholding tax prescribed by Section 79 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 2-98, as amended by RR Nos. 6-2001 and 12-2001.

Moreover, pursuant to Section 2.78.1 (A) (7) of RR 2-98, as amended, the terminal pay, *i.e.*, communication 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.

It is, however, understood that this exemption does not include the payment of separated employees' salaries and the payment of the 13th month pay and other benefits in excess of P82,000.00 [1] threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of RR 2-98, as amended. (BIR Ruling Nos. 479-2014 dated December 3, 2014 and 416-2012 dated June 25, 2012)

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 as null and void.

Very truly yours,

Copyright 2020 CD Technologies Asia, Inc.

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

Footnotes

1. As amended by Revenue Regulations No. 3-2015 dated March 13, 2015.

Copyright 2020 CD Technologies Asia, Inc.