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

Sec. 32 (B)(6)(a), 1997 Tax Code, as amended
BIR Ruling No. 371-2017 BIR Ruling No. 442-2012
OT-0416-2020
JUL 24 2020

Otsuka (Philippines) Pharmaceutical, Inc.
3/F King's Court II Building, 2129 Chino Roces Avenue
Makati City 1231

Attention: **Ms. Maria Luisa C. Jose**
Human Resources Manager

Gentlemen:

This refers to your letter dated August 28, 2019 requesting for confirmatory ruling that the retirement benefits to be received by MR. ULYSSES C. ADRIATICO ("Mr. Adriatico") from **Otsuka (Philippines) Pharmaceutical, Inc.'s ("Otsuka"** or **"the Company")** is tax exempt.

Documents show that Otsuka maintains a retirement benefit plan ("the Plan") which is certified by the BIR as a reasonable retirement benefit plan under Republic Act (R.A.) No. 4917.[1] The Plan provides for normal retirement on the member's sixtieth (60th) birthday and after rendering at least five (5) years of credited service with the Company. On the other hand, Mr. Adriatico is a former employee employed by Otsuka on January 18, 1998. He last occupied the position of Sales Director before his early retirement from the Company on September 16, 2019 or after twenty-one (21) years of service. He is fifty-one (51) years old at the time of his retirement.

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

> *"(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."*

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[1] BIR Rulings Nos. ERP-042-2016 and ERP-042-2016 both dated 31 May 2016.

The above-cited provision provides merely for the minimum requirements in order for the retirement benefits to be exempt from income tax and consequently from withholding tax, i.e., length of service of at least 10 years and 50 years of age at the time of retirement. However, the retirement benefit plan of the company may provide for more than 10 years of service and more than 50 years of age.

It is noted that under Section 1, Article IV of the Plan, an employee is entitled to retirement pay upon reaching the age of sixty (60) and after rendition of five (5) years of service in the Company. In such cases, the retirement benefits received under the aforesaid provision of the Plan shall only be exempt from income tax if the two conditions provided under Section 32 (B)(6)(a) of the 1997 Tax Code, as amended, are both present, to wit: (1) the employee had been in the service of Otsuka for at least ten (10) years; and (2) he is at least fifty (50) years old at the time of retirement.

Applying the foregoing in the instant case, it is shown that Mr. Adriatico was able to comply with the two (2) conditions above. He has rendered twenty-one (21) years of service in the company and is fifty-one (51) years old at the time of his retirement. Thus, the retirement benefits which he shall receive from Otsuka shall be exempt from income tax, and consequently, from withholding tax, pursuant to Section 32 (B)(6)(a) of the 1997 Tax Code, as amended, provided that the benefits granted shall be availed of by Mr. Adriatico only once.

Moreover, pursuant to Sections 2.78.1 (A) (3) and (7) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 11-2018, the terminal pay, i.e., commutation and payment of monetized unused vacation leave credits not exceeding ten (10) days during the year, is not subject to income tax and consequently to the withholding tax. Conversely, the cash equivalent of vacation leave credits 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. Finally, the tax exemption does not include the company's payment of Mr. Adriatico's salary.

It is must be understood that the payment to Mr. Adriatico of his salaries and the payment of the 13th month pay and other benefits in excess of the PhP90,000.00 threshold 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 by RR No. 11-2018.

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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