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October 30 2018

Commissioner Cesar Dulay
Deputy Commissioner Marissa Cabreros

Bureau of Internal Revenue
BIR Road, Quezon City

Re: BIR RMC 50-2018 taxing premiums
On group health insurance of employees

Dear Commissioner Dulay and Deputy Commissioner Cabreros:

The Joint Foreign Chambers, the IT and Business Process Association of the Philippines (IBPAP), and the Global In-House Center Council of the Philippines (GICC) respectfully request for a meeting with your good office to discuss concerns regarding BIR RMC 50-2018 taxing premiums on group health insurance of our respective member-corporations' employees.

RMC 50-2018, supposedly issued to clarify and implement provisions of Republic Act No. 10963 (TRAIN law), states that "Premium on Health Card paid by employer for all employees, whether rank and file or managerial/supervisory, under a group insurance shall be included as part of other benefits of these employees which are subject to the P90,000 threshold." It lays down the new rule that premiums borne by the employer under group insurance would now form part of the taxable income of the employee after exhausting the P 90,000 non-taxable bonus.

We were surprised at this issuance because we do not recall this issue being deliberated on during the hearings on TRAIN. We strongly believe that, consistent with the intent of the law, previous practice and long-standing BIR rulings, premiums on health insurance should remain to be tax-exempt for the following reasons:

- If implemented as per BIR RMC, this would result in a significant erosion in the increase in disposable income which was promised to employees and guaranteed by TRAIN 1. By some estimates, as much as ¼ of the increase in take-home pay which was assured by TRAIN 1 would have to be clawed back from the employee to pay the taxes on the premiums from health insurance. Changing the tax treatment on premiums paid by employers is contrary to the objectives of the TRAIN law of enhancing progressivity of tax system and improving levels of disposal income. Taxing premiums significantly erodes such benefits guaranteed by TRAIN Law itself.

- A regressive system of taxation - By its very nature, the computation of premium depends on certain conditions such that the highest premium would be for the most vulnerable individuals – those with higher age, more dependents, and more pre-existing conditions. Alternatively, an equal distribution of the group premium, while progressive, would result in unfair situation where low-usage

individuals would be bearing a heavy tax, such that we foresee pressure from such employees to request opting out of the group plan.

- Inconsistency in policy - Premiums on group insurance should continue to be tax exempt per law and BIR rulings. As early as 2003, the BIR, through then Commissioner Jose Mario Buñag, held that insurance premiums paid by the employer shall be excluded from gross income and therefore not subject to withholding tax[1]. This was cited in several other rulings issued by the BIR[2]. Thus, the interpretation that premiums on group insurance are tax exempt as implemented by the BIR prior to the TRAIN law should not be disturbed by mere issuance of RMC 50-2018. This is in accordance with principles laid down by the Supreme Court in the several cases[3] which upheld long standing interpretations of government agencies if they were not affected by amendments of laws:

  > "It is reasonable to suppose that a long standing administrative practice, if contrary to the intention of the legislature, would be specifically corrected by it. (1 USTC, Par. 259; see also 1 USTC, Par. 293). That Congress merely reenacted the old law in the face of the long continued practice of the Bureau of Internal Revenue which it published in the Official Gazette is a strong indication that such practice has received congressional approval. We find no justification to deviate from the rule."||| *(Commissioner of Internal Revenue v. Ledesma, G.R. No. L-17509, [January 30, 1970], 142 PHIL 176-192)*

- Premiums are not part of gross income for lack of actual or constructive receipt by the employees. - Section 32 (A) (l) of the Tax Code, as amended, provides that the term "gross income" includes compensation for services in whatever form paid including, but not limited to, fees, salaries, wages, commissions, and similar items. On the other hand, compensation is defined under Section 2.78. (A) of Revenue Regulations (RR) No. 2-98, as amended, as "all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code". However, Section 2.83.6 of RR 2-98 further clarifies that compensation must be actually or constructively paid to be subject to withholding tax on compensation:

  > "Sec.2.83.6. *Applicability of constructive receipt of compensation. — The withholding tax on compensation shall apply to compensation actually or constructively paid. Compensation is constructively paid within the meaning of these Regulations when it is credited to the account of or set apart for an employee so that it may be drawn upon by him at any time although not then actually*

[1] BIR Ruling [DA-081-03], [March 17, 2003]
[2] BIR Ruling no. DA-469-07 dated 24 August 2007; BIR Ruling No. DA-139-05 dated 11 April 2005
[3] *Commissioner of Internal Revenue v. Ledesma, G.R. No. L-17509, [January 30, 1970], 142 PHIL 176-192*

> *reduced to possession*. To constitute payment in such a case, the compensation must be credited or set apart for the employee without any substantial limitation or restriction as to time or manner of payment or condition upon which payment is to be made, and must be made available to him so that it may be drawn upon at any time, and its *payments brought within his control and disposition*. A book entry, if made, should indicate an absolute transfer from one account to another. If the income is not credited, but it is set apart, such income must be unqualifiedly subject to the demand of the taxpayer. Where a corporation contingently credits its employees with a bonus stock, which is not available to such employees until some future date, the mere crediting on the books of the corporation does not constitute payment.

Group premiums are typically charged in totality based on overall profile of the group, and not individual allocation. Once premiums are paid by the employer, it depends on circumstances (state of wellbeing/health) if the employees will avail of the benefits under the policy. There are also several conditions or "limitations" for employees to avail of the insurance coverage such that not all sickness can be covered. As the premium on group insurance does not meet the above-mentioned condition that "it may be drawn upon at any time, and its *payments brought within his control and disposition,"* then the premiums cannot be considered taxable to the employees.

- Contrary to state policy - Premiums on group insurance should continue to be tax exempt because it is for the convenience of the employers and for promotion of health, goodwill, contentment, or efficiency of the employees in accordance with Section 2.78.1(A)(2) and (3) of Revenue Regulations No. 2-98, as amended. With the rising costs of medical procedures and hospitalization, we understand that one of the reasons to promote insurance coverage by employers is to address the shortcomings of healthcare coverage under SSS. Employees have immediate access to doctors and hospitals through the group insurance coverage and are able to increase productivity for the benefit of the employers. With the additional tax, we anticipate that many employees might opt out of the group health insurance plan. Even assuming that there is mechanism to execute such opt-out, this would potentially result in employees not getting sufficient health coverage for emergencies after opting-out. This would also result in the premium on remaining employees to further increase due to lower volume, and overall risk profile increase of group.

In view of the above, we respectfully request that the BIR reconsider the taxability of group premiums under RMC 50-2018.

We would be honored if you can meet with our industry associations for discussion on these concerns.

Regards,

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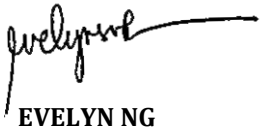

EVELYN NG
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Cc:

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