Bringing In Revenues
for Nation-Building

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

**Quezon City**

BAGONG PILIPINAS

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| Section 27(C), 32(B)(7)(b) of the Tax Code of 1997, as amended |
| BIR Ruling No. 239-14 |
| 057-2025 |

APR 14 2025

**PROVINCIAL TREASURER'S OFFICE**
Province of Catanduanes

Attention: **Ms. Marilou M. Vargas**
*Provincial Treasurer*

Gentlemen:

This refers to your letter requesting for the issuance of a ruling as to whether or not the Provincial Local Government Unit (PLGU) of Catanduanes is exempt from the withholding tax imposed on the income generated from the rental of the PLGU's establishments.

It is represented that this request for ruling is being sought due to the tax withheld by Wholegrain, Inc. from their rental payment of Catanduanes Central Mall, a matter to which the PLGU of Catanduanes has expressed opposition.

In reply, please be informed that Section 27(C) of the National Internal Revenue Code of 1997, as amended (NIRC) provides, *viz.:*

> **"Section 27. Rates of income tax on domestic corporations. —**
>
> *xxx xxx xxx*
>
> *C) Government-owned or Controlled Corporations, Agencies or Instrumentalities.* - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Home Development Mutual Fund (HDMF), the Philippine Health Insurance Corporation (PHIC), and the local water districts shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.
>
> *xxx xxx xxx"*

However, Section 32 (B)(7)(b) of the NIRC, provides, *viz:*

*"Sec. 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:

(7) *Miscellaneous Items.*

*xxx xxx xxx*

(b) *Income Derived by the Government or its Political Subdivisions.* — Income derived from any public utility or from the exercise of essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.

*xxx xxx xxx"*

Under Sec. 27(C) of the NIRC, government-owned or -controlled corporations, agencies or instrumentalities of the government are no longer exempt from taxation and shall be liable to pay such rate of tax upon their taxable income as are imposed upon corporations or associations engaged in similar business, industry or activity. On the other hand, Section 32(B)(7)(b) of the NIRC, excludes from the gross income and exempts from income tax, including the final tax under Section 27(D)(1) of the NIRC of 1997, as amended, the income derived from the discharge of any essential governmental functions accruing to the Government of the Philippines or to any of its political subdivisions. It is necessary then to determine whether or not the PLGU of Catanduanes, in leasing out the Catanduanes Central Mall to Wholegrain, Inc., performs an essential government function.

In BIR Ruling No. 369-11 dated October 5, 2011, the Bureau has determined:

> "There is no hard and fast rule for purposes of determining the true nature of an undertaking or function of a provincial, city, or a municipal corporation (local government unit). The surrounding circumstances of a particular case are to be considered and would be decisive. The basic element, however beneficial to the public the undertaking may be, is that it is governmental in essence, otherwise the function becomes private or proprietary in character.[1] It has been established though that an instrumentality of the government which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people performs governmental and not proprietary functions.[2]
>
> The distinction between acts in the performance of a governmental function and those in the performance of a corporate or proprietary function is that in the case of the former, the municipal corporation is executing a legislative mandate with respect to a public duty generally, while in the other, it is exercising its private rights as a corporate body.[3]"

[1] Torio vs. Fontanilla, 85 SCRA 602 (1978)
[2] Peoples' Homesite and Housing Corporation vs. Court of Industrial Relations, 150 SCRA 296, 310 (1987)
[3] Loeb vs. Jacksonville, 101 Fla. 429, 69 ALR 459

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This Office is of the opinion that the leasing of the Catanduanes Central Mall to Wholegrain, Inc. is primarily an economic activity with a view to obtaining profit. The PLGU of Catanduanes acts in its proprietary or private character since no governmental or public policy of the state is involved.

As a corporation, the PLGU of Catanduanes enjoys full autonomy in the exercise of its economic enterprises, subject to the limitations provided in the Local Government Code of 1991 and other applicable laws. When a public corporation or a local government unit acts in its proprietary character, it is regarded as having the rights and obligations of a private corporation. Its income realized from or received in the exercise of its proprietary powers is subject to tax in the same manner as other private corporations similarly situated.[4]

Therefore, the PLGU of Catanduanes in its leasing of the Catanduanes Central Mall to Wholegrain, Inc. shall not be exempt from withholding tax. Consequently, Wholegrain, Inc. is required to withhold tax on its rental payment to the PLGU of Catanduanes.

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

Very truly yours,

**ROMEO D. LUMAGUI, JR.**
*Commissioner of Internal Revenue*

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[4] Sison vs. Ancheta, 130 SCRA 654, 664 (1984)