REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 30, RA 8424, as amended; RMC 65-2012
BIR Ruling No. 145-2013 BIR Ruling No. 170-2011
#050-2016 1-29-2016

(Date)

LPL GREENHILLS CONDOMINIUM CORPORATION
17 Eisenhower St., Greenhills, San Juan

Attention: **MR. ARVIN L. ATIENZA**
Building Administrator

Gentlemen:

This refers to your letter dated October 1, 2012 requesting in behalf of the **LPL GREENHILLS CONDOMINIUM CORPORATION** for the amendment of your Certificate of Registration to cancel certain tax types based on the premise that you are merely a non-stock, non-profit condominium corporation exempt from taxation

It is represented that **LPL GREENHILLS CONDOMINIUM CORPORATION**, is a condominium corporation registered with the Bureau of Internal Revenue with taxpayer's identification number Upon registration it was determined that it shall pay Income Tax, Expanded Withholding Tax, Percentage Tax and Withholding Tax on Compensation. It now requests that it not be imposed Percentage Tax and Income Tax on the ground that it is merely a non-stock, non-profit condominium corporation exempt from taxation.

In reply, please be informed that neither Revenue Memorandum Circular No. 65-2012 nor Republic Act No. 4726 otherwise known as "The Condominium Act", the controlling law on condominium projects, provide for any exemption from taxation to condominium corporations. **LPL GREENHILLS CONDOMINIUM CORPORATION** is also not among those corporations contemplated under Section 30 of the Tax Code of 1997, as amended.

Revenue Memorandum Circular (RMC) No. 65-2012 discussed the taxability of association dues, membership fees, and other assessments/charges collected by condominium corporations from its members, tenants and other entities, herein quoted as follows:

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"I. **Income Tax** – The amounts paid in as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter subject to income tax. This is because a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments. For tax purposes, the association dues, membership fees, and other assessments/charges collected by a condominium corporation constitute income payments or compensation for beneficial services it provides to its members and tenants. The previous interpretation that the assessment dues are funds which are merely held in trust by a condominium corporation lacks legal basis and is hereby abandoned.

Moreover, since a condominium corporation is subject to income tax, income payments made to it are subject to applicable withholding taxes under existing regulations.

II. **Value-Added Tax (VAT)** – Association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants.

Section 105 of the National Internal Revenue Code of 1997, as amended, provides:

> "SECTION 105. Persons Liable. – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> x x x
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> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by **any person regardless of whether or not the person engaged therein is a nonstock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests)**, or government entity." (Emphasis supplied)

The above provision is clear – even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. This conclusion was affirmed by the Supreme Court in Commissioner of Internal Revenue v. Court of Appeals and Commonwealth

Management and Services Corporation, G.R. No. 125355, March 30, 2000. In this case, the Supreme Court held:

> "(E)ven a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.
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> The definition of the term "in the course of trade or business" present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.
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> Sec. 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." It includes "the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project."
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> On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered. In fact, even if such corporation was organized without any intention realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.
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> Hence, **it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only**, without realizing

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profit, for purposes of determining liability for VAT on services rendered. **As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.**"

Accordingly, the gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes under existing regulations."

Hence, the income earned by **LPL GREENHILLS CONDOMINIUM CORPORATION** is subject to the regular corporate income tax imposed by Section 27(A) of the same Code. Also, the gross receipts of the condominium corporation are subject to the 12% VAT imposed under Sections 106 and 108 of the Tax Code of 1997, as amended; or the 3% percentage tax imposed under Section 116 in relation to Section 109 (1)(W) of the same Code if the gross sales or receipts from such sale of services do not exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00)[1] which tax payment may legitimately be passed on to buyers of such services. *(BIR Ruling No. 170-11 dated May 25, 2011)*

On the issue of the determination by the Regional Trial Court of Makati that Revenue Memorandum Circular No. 65-2012 is invalid in the special civil action case FIRST e-BANK TOWER CONDO CORP v. BIR, *(SCA 12-1236, Sept 5, 2013)*, we opine that the declaration of invalidity of the issuance is not yet final as there is a pending appeal filed by the Bureau with the Supreme Court of the Philippines.

In view of the foregoing, your request for cancellation of certain tax types from your Certificate of Registration is hereby denied for lack of legal basis.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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[1] Starting January 1, 2012, Revenue Regulations No. 016-11, dated October 27, 2011.