REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 101(A)(2), NIRC	RR No. 02-2003	#097-2016

Person to Contact: Chief, Law Division
Tel Nos. 926-5536/927-09-63

Date: March 31, 2016

DEPARTMENT OF FOREIGN AFFAIRS
Office of Assets Management and Support Services
2330 Roxas Bldg., Pasay City
1300 Philippines

Attention: **Maria Fe T. Pangilinan**
Assistant Secretary

Gentlemen:

This refers to your letters dated September 16, 2015 and February 9, 2016 requesting advice on relevant procedures and requirements to effect the transfer of ownership of a wall mural to be donated by the US-Philippine Embassy Society to the Philippine Embassy in Washington DC.

It is represented that aside from the plan to commission a mural, the Philippine Embassy has also tapped the generosity of some Filipino artists, sculptors and possible donors who will contribute individual art pieces towards the beautification of the Old Chancery once the building's renovation is completed in the first Quarter of 2016; that the individual art pieces with key artistic elements to be donated to the Embassy would not only highlight the building but would also effectively promote Filipino artistry and craftsmanship; and that the art pieces shall remain lasting reference points of the building that would be appreciated by the Embassy employees and visitors alike for years to come. The representations, however, were not clear on whether the donors are residents or non-residents.

In reply, please be informed as follows:

As to donor's tax liability, Section 98 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that transfers by any person, resident or nonresident, by gift, of property, real or personal, are generally subject to tax. Section 98 reads:

039907

"CHAPTER II — DONOR'S TAX

SEC. 98. Imposition of Tax. —

(A) there shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift, a tax, computed as provided in Section 99.

(B) the tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

xxx xxx xxx"

However, certain transfers are exempt from donor's tax such as the donations made by residents and non-residents to entities enumerated under Section 101 of the NIRC of 1997, as amended. The aforesaid Section states:

"SEC. 101. Exemption of Certain Gifts. — The following gifts or donation shall be exempt from the tax provided for in this Chapter:

(A) In the Case of Gifts Made by a Resident. —

(1) . . .
(2) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government; and

xxx xxx xxx

(B) In the Case of Gifts Made by a Nonresident not a Citizen of the Philippines. -

(1) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government.

xxx xxx xxx"

039907

Based on the foregoing, since the donee, the Philippine Embassy in Washington DC, is a political subdivision of the Government of the Republic of the Philippines, the donations in its favor of the wall mural and individual art pieces are hereby exempt from donor's tax, pursuant to Section 101(A)(2) and (B)(1) of the NIRC of 1997.

However, the donors are still required to file donor's tax returns and notice of donation pursuant to Section 13 of Revenue Regulations (RR) No. 02-2003 (*Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by Republic Act No. 8424, the Tax Reform Act of 1997*), to wit:

> *"SEC. 13. FILING OF RETURNS AND PAYMENT OF DONOR'S TAX. - (A) Requirements. – Any person making a donation (whether direct or indirect), unless the donation is specifically exempt under the Code or other special laws, is required, for every donation, to accomplish under oath a donor's tax return in duplicate. The return shall set forth: (1) Each gift made during the calendar year which is to be included in computing net gifts; (2) The deductions claimed and allowable; (3) Any previous net gifts made during the same calendar year; (4) The name of the donee; (5) Relationship of the donor to the donee; and (6) Such further information as the Commissioner may require.*
>
> *(B) Time and place of filing and payment. – The donor's tax return shall be filed within thirty (30) days after the date the gift is made or completed and the tax due thereon shall be paid at the same time that the return is filed. Unless the Commissioner otherwise permits, the return shall be filed and the tax paid to an authorized agent bank, the Revenue District Officer, Revenue Collection Officer or duly authorized Treasurer of the city or municipality where the donor was domiciled at the time of the transfer, or if there be no legal residence in the Philippines, with the Office of the Commissioner. In the case of gifts made by a non-resident, the return may be filed with the Philippine Embassy or Consulate in the country where he is domiciled at the time of the transfer, or directly with the Office of the Commissioner. For this purpose, the term "OFFICE OF THE COMMISSIONER" shall refer to the Revenue District Office (RDO) having jurisdiction over the BIR-National Office Building which houses the Office of the Commissioner, or presently, to the Revenue District Office No. 39 – South Quezon City.*
>
> *(C) Notice of donation by a donor engaged in business. – In order to be exempt from donor's tax and to*

#097-2016
3-31-2016

claim full deduction of the donation given to qualified donee institutions duly accredited by the Philippine Council for NGO Certification, Inc. 22 (PCNC), the donor engaged in business shall give a notice of donation on every donation worth at least Fifty Thousand Pesos (P50,000) to the Revenue District Office (RDO) which has jurisdiction over his place of business within thirty (30) days after receipt of the qualified donee institution's duly issued Certificate of Donation, which shall be attached to the said Notice of Donation, stating that not more than thirty percent (30%) of the said donation/gifts for the taxable year shall be used by such accredited non-stock, non-profit corporation/NGO institution (qualified-donee institution) for administration purposes pursuant to the provisions of Section 101(A)(3) and (B)(2) of the Code."

Full compliance with the foregoing requirements shall serve as basis for the transfer of the ownership of the donated artworks in favor of the Philippine Embassy.

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

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

039907
MAR 2 1 2016

K-1-JHB