January 29, 2019

BIR RULING NO. 122-19

Section 30 (E) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 466-2014

GT-Metro Foundation, Inc.
15/F Metrobank Plaza, Sen. Gil Puyat Ave.,
Makati City 1200

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 16, 2013 applying in behalf of **GT-METRO FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

It is represented that of **GT-METRO FOUNDATION, INC.** with BIR Taxpayer's Identification Number (TIN) 000-000-000-000 and Certificate of Registration Number OCN 9RC0000274044 dated March 12, 2010, is a non-stock corporation duly organized and existing under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. CN200915321; and that the primary purpose for which it was incorporated is:

> *To initiate, stimulate, encourage, undertake, promote, develop, support, finance, assist, manage or maintain philanthropic, charitable, scientific, educational, religious or cultural projects, programs, activities and undertakings geared towards the upliftment of the material, physical, social, economic, spiritual and moral welfare of the people, such as, but not limited to, the grant of donations and other forms of support to charitable institutions and activities and the grant of material support or assistance in the establishment and management for hospitals, schools and other institutions geared towards the promotion of the well-being of the people.*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/organizations that are exempt from income tax in respect to income received by them as such. Section 30 (E) of the National Internal Revenue Code

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of 1997, as amended, provides, *viz.*:

> *"Sec. 30. Exempt from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such:*
>
> xxx xxx xxx
>
> *(E) Non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;"*

"Non-stock" means "*no part of its income is distributable as dividends to its members, trustees, or officers*" and that any profit *"obtained as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized."* [1] "Non-profit" means that *"no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit."* [2]

Revenue Memorandum Circular (RMC) No. 51-2014 has clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the National Internal Revenue Code of 1997, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

> 1. *The payment of compensation, salaries, or honorarium to its trustees or organizers; x x x.*

The Amended By-laws of **GT-METRO FOUNDATION, INC.** disclosed that the members of the Board of Trustees are receiving per diems for attending regular and special meetings as may be approved by the members. [3]

The per diems being received by the members of the Board of Trustees are considered distributions of the equity (including the net income) of **GT-METRO FOUNDATION, INC.** This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **GT-METRO FOUNDATION, INC.** cannot be qualified as a non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

Please bear in mind that, *"being a non-stock and/or non-profit corporation does not, by this reason alone, completely exempt an institution from tax."* [4] Thus, *"statutes granting tax exemptions are construed **strictissimi juris** against the taxpayer and*

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liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed." [5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **GT-METRO FOUNDATION, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **GT-METRO FOUNDATION, INC.** shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and other internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended.

Moreover, Section 105 of the National Internal Revenue Code of 1997 provides that 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 the same Code.

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 non-stock, 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.

Accordingly, if **GT-METRO FOUNDATION, INC.** is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, its revenues derived therefrom shall be subject to the twelve percent (12%) VAT, in case the gross receipts from such sales exceed Three Million Pesos (P3,000,000.00), [6] or to the three percent (3%) percentage tax, if gross receipts do not exceed Three Million Pesos (3,000,000.00).

It must be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. Being an indirect tax, the amount of tax may be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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Footnotes

1. Section 87, Corporation Code.
2. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
3. Section 7, Article III, Amended By-Laws.
4. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
5. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].
6. Republic Act (RA) No. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 01, 2018.

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