November 15, 2018

BIR RULING NO. 1335-18

Sections 101 (A) (2), 101 (B) (1), 34 (H) and 107 (A) of the Tax Code of 1997, as amended; BIR Ruling No. 418-12; BIR Ruling No. 132-13

Hon. David C. Suarez
Governor
Province of Quezon
2nd flr. Prov'l Governor's Office
Capitol Cmpd., Lucena City

Sir :

This refers to your letter dated July 18, 2014 requesting guideline on the taxability and deductibility from taxable income of cash and/or goods donations to the disaster relief operation and rehabilitation program of the Provincial Government of Quezon.

In reply, please be informed that donations made in favor of the Government and any of its agencies which are not conducted for profit, or to any of its political subdivisions, are exempt from the payment of the donor's tax pursuant to the pertinent provisions of Section 101 (A) (2) and Section 101 (B) (1) of the Tax Code of 1997, as amended, which provides to wit:

> *"SEC. 101. Exemption of Certain Gifts. — The following gifts or donations shall be exempt from the tax provided for in this Chapter:*
>
> *(A) In the Case of Gifts Made by a Resident. —*
>
> xxx xxx xxx
>
> *(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;*
>
> 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*

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created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government."

Accordingly, donations made 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 shall be exempt from the donor's tax.

Moreover, Section 107 (A) of the Tax Code of 1997, as amended, provides:

SEC. 107. Value-Added Tax on Importation of Goods. —

(A) In General. — There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to twelve percent (12%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: . . ."

It is clear from the foregoing provision that generally, all importations are subject to value-added tax (VAT). VAT on importation is a tax on the privilege of importing goods whether or not the taxpayer is engaged in business, and regardless of whether the imported goods are intended for sale, barter or exchange, or for personal use.

Accordingly, donations in kind from abroad is subject to VAT at the rate of 12% of the total value used by the Bureau of Customs in determining tariff and customs duties, pursuant to Section 107 (a) of the 1997 Tax Code, as amended. (BIR Ruling No. 132-2013 dated April 4, 2013)

With respect to the deductibility of the donations on the part of the donors, said donations may be deductible in full or subject to five (5%) percent or ten (10%) percent limitations in accordance with Section 34 (H) of the Tax Code of 1997, as amended, which provides, *viz.*:

"Sec. 34. Deductions from Gross Income. —

(H) Charitable and Other Contributions. —

(1) In General. — Contributions or gifts actually paid or made within the taxable year to, or for the use of the Government of the Philippines or any of its agencies or any political subdivision thereof exclusively for public purposes, or to accredited domestic corporation or associations organized and operated exclusively for religious, charitable, scientific, youth and sports development, cultural or educational purposes or for the rehabilitation of veterans, or to social welfare institutions, or to non-government organizations, in accordance with rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, no part of the net income of which inures to the benefit of any private stockholder or individual in an amount not in excess of ten percent (10%) in the case of an individual, and five percent (5%) in the case of a corporation, of the taxpayer's taxable income derived from trade, business or profession as computed

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without the benefit of this and the following subparagraphs.

(2) Contributions Deductible in Full. — Notwithstanding the provisions of the preceding subparagraph, donations to the following institutions or entities shall be deductible in full;

(a) Donations to the Government. — Donations to the Government of the Philippines or to any of its agencies or political subdivisions, including fully-owned government corporations, exclusively to finance, to provide for, or to be used in undertaking priority activities in education, health, youth and sports development, human settlements, science and culture, and in economic development according to a National Priority Plan determined by the National Economic and Development Authority (NEDA), in consultation with appropriate government agencies, including its regional development councils and private philanthropic persons and institutions: Provided, That any donation which is made to the Government or to any of its agencies or political subdivisions not in accordance with the said annual priority plan shall be subject to the limitations prescribed in paragraph (1) of this Subsection;" (Underscoring ours)

Based on the foregoing, the extent of the deductibility of the donations to the Government or to any of its agencies or political subdivisions, including fully-owned government corporations, shall depend on the purpose for which the donation shall be utilized. The donation shall be fully deductible when it shall be exclusively used to finance priority activities in education, health, youth and sports development, human settlements, science and culture, and in economic development according to the National Priority Plan determined by the National Economic and Development Authority (NEDA).

On the other hand, the deductibility of the donation shall be subject to the five (5%) percent or ten (10%) percent limitations when utilized for purposes other than those stated in the National Priority Plan determined by the NEDA. (BIR Ruling No. 418-2012 dated June 25, 2012)

Please be guided accordingly.

Very truly yours,

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

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