November 15, 2018

BIR RULING NO. 1353-18

Republic Act No. 9500; Sections 237 & 238
of the 1997 Tax Code; Revenue Regulations
No. 18-2012

University of the Philippines
System Accounting Office
Alumni Center, Magsaysay Avenue
Diliman, Quezon City

Attention: *AAA*

Gentlemen :

This refers to your two (2) letters dated February 5, 2014 and February 26, 2014, respectively, requesting on behalf of the **University of the Philippines Press** ("**UP Press**"), for confirmation that UP Press, being part of the University of the Philippines System ("UP System"), is exempt from creditable withholding tax on the payments made to it by its clients pursuant to Section 25 of Republic Act (RA) No. 9500. Likewise, you are requesting for clarification on the status of the University of the Philippines (UP) and the UP Press with regard to the provisions of Revenue Regulations (RR) No. 18-2012 *(Regulations in the Processing of Authority to Print (ATP) Official Receipts, Sales Invoices, and Other Commercial Invoices using the On-line ATP System and Providing for the Additional Requirements in the Printing Thereof)*.

It is represented that UP Press is part of the UP System and was established on March 16, 1965 as the official publishing house of all Constituent Units of the UP System; that the University of the Philippines and its auxiliary units like the UP Press are not profit-generating enterprises and all their cash receipts go entirely to the University's operations; and that the UP Press, being part of the UP System, also enjoys the tax exemption granted to the UP System under Section 25 of RA 9500 which provides, to wit:

> *"Section 25. Tax Exemptions. — The provisions of any general or special law to the contrary notwithstanding:*

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(a) All revenues and assets of the University of the Philippines used for education purposes or in support thereof shall be exempt from all taxes and duties."

In reply, please be informed that Section 4 of the same Act provides for the composition of the UP System as follows, *viz.*:

> *"Section 4. The University System. — The University of the Philippines is a university system and shall be composed of constituent universities established solely by its Board of Regents upon the recommendation of the President of the University. The University of the Philippines System is composed of its existing constituent universities, as follows: University of the Philippines Diliman; University of the Philippines Manila; University of the Philippines Los Baños; University of the Philippines Visayas; University of the Philippines Mindanao; University of the Philippines Baguio; University of the Philippines Open University; and those that may be created in the future. It is referred to in this law as the "National University."* (Underscoring supplied)

It is clear from the foregoing that the UP System is composed only of the constituent universities enumerated above and those that may have been created by the UP Board of Regents. The term "university" is defined as an institution of higher learning, consisting of an assemblage of colleges united under one corporate organization and government, affording instruction in the arts and sciences and the learned professions and conferring degrees. (*Com. v. Banks*, 198 Pa. 397. 48 Ad. 277 Black's Law Dictionary). Verily, the UP Press, which was created solely for the purpose of carrying out the publications program of the UP System, does not fall within the purview of the definition of a university that would qualify it as part of the UP System. The fact that the UP Press is being managed by a Board Management and not by the UP Board of Regents confirms its status as a separate unit from the UP System since under Section 12 of RA 9500, it is the Board of Regents which shall govern the UP System. Accordingly, the UP Press cannot avail of the tax exemption being enjoyed by the UP System under Section 25 of RA 9500 and thus, it is not exempt from the income tax and consequently, from the creditable withholding tax.

Anent your request for clarification on the status of UP and UP Press with regard to the provisions of RR No. 018-2012, please note that state universities and colleges are considered agencies of the government, as explained by the Supreme Court in the case of *Boy Scouts of the Philippines vs. National Labor Relations Commission, G.R. No. 80767* dated April 22, 1991, to wit:

> "An 'agency of the Government' is defined as referring to any of the various units of the Government including a department, bureau, office, instrumentality, government-owned or -controlled corporation, or local government or distinct unit therein. 'Government instrumentality' is in turn defined in the 1987 Administrative

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Code in the following manner:

> Instrumentality — refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.
>
> The same Code describes a 'chartered institution' in the following terms:
>
> Chartered institution — refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges, and the monetary authority of the State."

Since UP is a government agency not engaged in proprietary activity, it is not covered by the provisions of RR No. 18-2012. UP Press, however, not being part of the UP System, is covered by the provisions of RR No. 18-2012. UP Press, therefore, is required to issue official receipts for its income received from its printing and publication activities, and to secure Authority to Print Official Receipts and other Commercial Invoices pursuant to RR No. 18-2012.

A government agency which engages in proprietary functions exposes itself to the imposition of taxes as if the same is undertaken by an ordinary taxpayer. As emphasized in RR No. 18-2012, "when a public corporation x x x acts in its proprietary character, it is regarded as having the rights and obligations of a private corporation. A government entity is taxable when the following requisites concur: (1) the government entity concerned is not performing an essential governmental function; and (2) it is engaged in a similar business, industry, or activity performed by other ordinary taxable corporations." It is noted that the above conditions are present in this case. There is no showing that the publication and sale of books by UP Press is an essential governmental function. Also, the publication and sale of books for a fee is an activity which can be performed by ordinary taxable entities. Accordingly, any income realized from or received by UP Press in the publication and sale of books shall be subject to income tax in the same manner as other private corporations similarly situated.

Very truly yours,

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

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