April 3, 2019

BIR RULING NO. 222-19

RA 9400; 000-00

Roxas Cruz Tagle and Co.
2/F Multinational Bancorporation Centre
6805 Ayala Avenue, Makati City 1226

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 9, 2018 requesting on behalf of your client, **The Medical City Clark, Inc. (TMC Clark)** for a confirmatory ruling that the revenues earned by TMC Clark from its registered activities within the Clark Freeport Zone (CFZ) is subject to the five percent (5%) tax on gross income.

As represented, TMC Clark (TIN: 000-000-000-000) is a corporation organized under the laws of the Republic of the Philippines on June 11, 2014 with registered business address at 100 Gatwick Gateway, Sabah Al-Ahmad Global Gateway Logistics City, Industrial Estate 5, Clark Freeport Zone, Pampanga.

Its primary purpose is to establish, operate, and own a hospital or hospitals, medical and chemical clinics, and or laboratories and such other enterprises which may have similar or analogous undertakings or dedicated services in connection therewith. Moreover, TMC Clark is registered with the Clark Development Corporation (CDC). It was issued a Permit-To-Operate as a Clark Freeport Enterprise under Clark Business Registration No. C2017-290, to establish a hospital, healthcare and medical tourism complex within Global Gateway Logistics City. Among its incentives include: (1) payment of 5% tax on Gross Income earned, in lieu of national and local taxes; and (2) entitlement to tax exemption and duty-free importation of equipment, medicines and other medical-related supplies, furniture and fixtures to be used exclusively for the operation of TMC Clark. The Certificate of Registration and Tax Exemption (CORTE) issued by the CDC to TMC Clark is for the period June 11, 2017 to June 10, 2020.

While most of the clients/patients of TMC Clark come from outside the Clark Freeport Zone, its revenues were earned from the provision of services and sale of medicine and supplies within its premises inside the zone. Nevertheless, despite the CORTE issued by CDC, TMC Clark is being advised that it should present its revenues

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as activities subject to the 30% regular corporate income tax rate instead of the 5% tax on Gross Income for failing to meet the requirement that at least 70% of its income shall be derived from foreign sources. This is anchored on the fact that its clients/patients mostly come from outside the zone.

In reply, please be informed that Section 2 of Republic Act (R.A.) No. 9400, amending R.A. No. 7227 or the Bases Conversion and Development Act of 1992, provides:

> *"SEC. 2. Section 15 of Republic Act No. 7227, as amended, is hereby amended to read as follows:*
>
> *"The provisions of existing laws, rules and regulations to the contrary notwithstanding,* ***no national and local taxes shall be imposed on registered business enterprises within the CFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ*** *and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.*
>
> *"Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: Provided, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones."* (Emphasis supplied.)

Revenue Memorandum Circular (RMC) No. 36-07 circularizing the full text of the Executive Order (E.O.) No. 619 issued by the President of the Philippines on April 26, 2007 provides that —

> "Section 1. Duly registered business enterprises that will operate in special economic zones to be created by proclamation inside the Clark Freeport Zone shall be entitled to the same tax and duty incentives as provided for under R.A. 7916, as amended: Provided that for purpose of administering these incentives, the Philippine Economic Zone Authority shall register, regulate and supervise all registered enterprises within the said special economic zones."

Section 25 of R.A. No. 7916, as amended by R.A. No. 8748 provides —

> *"Section 5. Chapter III, Section 25 of Republic Act No. 7916 is hereby amended to read as follows:*
>
> > ***"Section 25.*** *Applicable National and Local Taxes. —* ***All persons and service establishments in the ECOZONE shall be subject to national and local taxes under the National Internal Revenue Code and the Local Government Code."***

Revenue Regulations (Rev. Regs.) No. 02-05 implementing R.A. No. 7227, R.A.

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No. 7916, as amended, R.A. No. 7903 and R.A. No. 7922, amending Rev. Regs. No. 1-95 as amended by Rev. Regs. No. 16-99 provides:

> "SECTION 3. National Tax Exemption and Incentives to Zone Registered Enterprises. — All ECOZONE-registered enterprises, CAGAYAN-ECOZONE registered enterprises and ZAMBO-ECOZONE registered enterprises who are covered by the special tax regime of 5%, including all SUBIC-ECOZONE registered enterprises doing business within the Zone shall enjoy the following:
>
> xxx xxx xxx
>
> f. Zone registered enterprises may generate income from sources within the Customs Territory of but up to Thirty Percent (30%) of its total income from all sources only. All of the income of Zone registered enterprises generated from sources within the Customs Territory shall be subject to the internal revenue laws of the Customs Territory and the regular internal revenue taxes and rate imposed for enterprises in the Customs Territory.
>
> Provided, however, that **in the event SUBIC-ZONE registered enterprises shall generate income from sources within the Customs Territory in excess of thirty percent (30%) of its total income from all sources, all of its income shall be subject to the regular internal revenue tax rate imposed for enterprise in the Customs Territory.**"

The afore-cited regulations is also applicable to CDC-registered enterprises since it is covered by R.A. No. 7227 as amended by R.A. No. 9400.

Moreover, Revenue Memorandum Circular (RMC) No. 50-07 clarifying the tax treatment of the sale, barter or exchange of goods or sale or exchange of services or lease of properties made by suppliers from the customs territory to the registered Freeport Zone enterprises in the Subic Freeport Zone (SFZ), including the Clark Freeport Zone (CFZ), as well as the Poro Point Freeport Zone (PPFZ), and vice versa pursuant to the provisions of Sections 12 and 15 of Republic Act (RA) No. 7227, as amended by RA 9400, in relation to Sections 106 (A) (2) (c) and 108 (B) (3) of the Tax Code of 1997, as amended by RA 9337, and implemented by Sections 5, 6, 12, and 13 of Rev. Regs. No. 4-07 amending Sections 4.106-5, 4.106-6, and 4.108-6 of Rev. Regs. No. 16-2005 states —

> "Q7: What is the tax treatment for the income of Freeport Zone-registered enterprises derived from sources in the Customs Territory?
>
> A7: Freeport Zone-registered enterprises may generate income from sources within the Customs Territory of up to thirty percent (30%) of its total income from all sources; provided, that should a Freeport Zone-registered enterprise's income from sources within the Customs Territory exceed thirty percent (30%) of its total income from all sources, then it shall be subject to the income tax laws of the Customs Territory; provided further, that in any case, customs duties and taxes must be paid with respect to transactions, receipts, income and sales of articles to

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the Customs Territory and in the Customs Territory."

Considering that TMC is a registered Clark Freeport Enterprise based on its Certificate of Registration and Tax Exemption, issued by Clark Development Corporation, it is entitled to enjoy the 5% preferential tax regime in lieu of national and local taxes, including VAT, so long as its sales within the Customs Territory do not exceed the aforesaid 30% threshold.

As represented, TMC Clark's revenues from outside the Clark Territory amounted to 70% of its total revenue, which is way above the 30% threshold. Following the foregoing provisions, TMC Clark's income from all sources shall be **subject to relevant internal revenue taxes under the National Internal Revenue Code (NIRC) of 1997, as amended**.

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

Very truly yours,

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

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