REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 34(H) & 101 of the NIRC of 1997, as amended
BIR Ruling No. 097-2016
#233-2016 6-2-2016

INTRAMUROS ADMINISTRATION
5th Floor, Palacio del Gobernador
Intramuros, 1002 Manila

Attention: **Marco Antonio Luisito Villanueva Sardillo III**
Administrator of Intramuros

Gentlemen:

This refers to your letter dated March 7, 2016 requesting legal opinion on the tax exemption of grants and donations to Intramuros Administration pursuant to Presidential Decree (PD) No. 1616, as amended by PD No. 1748.

It is represented that Intramuros Administration, a government agency attached to the Department of Tourism, was created by virtue of PD No. 1616, as amended; that it is entrusted with the mandate of ensuring the orderly restoration and development of Intramuros; that it is responsible for formulating, coordinating and/or executing policies on the implementation of all programs, projects and activities of the government affecting or relating to Intramuros; and that, as a redevelopment agency, Intramuros Administration may, among others, exercise the following functions:

1. Enter into contracts with any private persons or entity or any government agency either domestic or foreign, whenever necessary for the effective discharge of its functions and responsibilities under such terms and conditions as it may deem proper and reasonable;

2. Receive, take and hold by bequest, device, donation, gift, purchase or lease, from foreign or domestic sources, either absolutely or in trust for any of its purposes, any asset, grant or property, real or personal, subject to such limitations as are provided in existing laws and regulations; to convey such assets, grant or property; invest and reinvest the same and deal with and expand its assets and income in such manner as will best promote its objectives; and

3. Exercise all powers necessary or incidental to the attainment of the objectives of PD No. 1616.

041945

It is further represented that Intramuros Administration is presently in discussions with prospective donors for the donation of goods and supplies that would be necessary, beneficial or useful to its restoration and development agenda; that based on PD No. 1616, as amended by PD No. 1748, grants and donations to the Intramuros Administration are exempt from donors and all other taxes; and that since these tax exemptions have not been expressly revoked under Executive Order (EO) No. 93, series of 1986, the same may still be invoked by Intramuros Administration.

In reply, please be informed that Section 1 of EO No. 93 provides:

> *"Sec. 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:*
>
> *a) those covered by the non-impairment clause of the Constitution;*
>
> *b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;*
>
> *c) those enjoyed by enterprises registered with:*
>
> *(i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;*
>
> *(ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;*
>
> *(iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;*
>
> *d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;*
>
> *e) those conferred under the four basic codes namely:*
>
> *(i) the Tariff and Customs Code, as amended;*
>
> *(ii) the National Internal Revenue Code, as amended;*
>
> *(iii) the Local Tax Code, as amended;*
>
> *(iv) the Real Property Tax Code, as amended.*
>
> *f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board."*

041945

It must be noted that EO No. 93 was issued to address serious tax base erosion and considerable distortions in the tax treatment of similarly situated entities resulting from the various tax incentives enjoyed by private and government entities. The above provision is a clear and express revocation of the tax incentives given to government entities including that of the Intramuros Administration under PD No. 1616, as amended. While said EO expressly retained the tax exemption enjoyed by certain government entities, Intramuros Administration is not one of them. Thus, the tax exemption previously enjoyed by Intramuros Administration under PD No. 1616 is deemed revoked by EO No 93, consistent with the principle "*expressio unius est exclusio alterius*", the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.

It is worthy to note, however, that donations in favor of the Intramuros Administration may still be exempt from donor's tax under Section 101 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> *"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"*

Based on the foregoing, since the Intramuros Administration is a government agency attached to the Department of Tourism, the donations that will be made in its favor are exempt from donor's tax, pursuant to Section 101(A)(2) and (B)(1) of the NIRC of 1997. (*BIR Ruling No. 097-2016* dated March 31, 2016)

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 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*

041945

> *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."*

With respect to the deductibility of donations made in favor of the Intramuros Administration, Section 34 (H) (2) (a) of the NIRC of 1997, as amended, states that donations to the Government, its agencies or political subdivisions are deductible in full from the gross income of the donor. However, donations not in accordance with the National Priority Plan of the Government are subject to limited deductibility or deductions to an amount not exceeding 10% in the case of an individual and 5% in the case of a corporation of the taxpayer's taxable net income as computed without the benefit of this deduction, viz.:

> *"(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."*

Relative thereto, National Economic Development Plan (NEDA) Circular No. 01-2009 sets forth the guidelines for the issuance of certification of programs, projects and activities in the National Priority Plan (NPP), to wit:

> *"D. Procedure of the Issuance of the Certification of Inclusion in the NPP*
>
> *1. Certification on inclusion in the NPP may be issued for:*
>
> *a. PPA that is included in the NPPP but has not yet received any donation; and*
> *b. PPA that is included in the NPP and to which donation has been made prior to inclusion; provided that the immediately following item no. 2 has been complied with.*

041945

2. Request for certification shall be submitted to NEDA Central Office for evaluation not later than 31 December of the taxable year when donations were made so that approved tax deductions could be claimed during the succeeding year at the time of filing of income tax returns."

Hence, for purposes of entitlement to the full deductibility of the donation from gross income of the donor under Section 34 (H) (2) (a) of the NIRC of 1997, as amended, a certification must be secured from the NEDA that the donation to Intramuros Administration is in accordance with priority programs, projects and activities included in the current National Priority Plan. Otherwise, donations not in accordance with the National Priority Plan is subject to limited deductibility or deductions to an amount not exceeding 10% in the case of an individual and 5% in the case of a corporation of the taxpayer's taxable net income as computed without the benefit of this deduction.

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

041945
JUN 02 2016

K-1-JHB