**June 21, 2019**

# BIR RULING NO. 361-19

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

*Filipinas Golf & Country Club, Inc.*
4th Floor Dacon Bldg., 2281 Don Chino Roces Ave. Ext.
Barangay Magallanes, Makati City

Attention: *AAA*

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Gentlemen :

This refers to your letter dated August 12, 2016 applying on behalf of **FILIPINAS GOLF & COUNTRY CLUB, 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 (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 8, Makati City, dated September 20, 2016.

It is represented that **FILIPINAS GOLF & COUNTRY CLUB, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN9RC0000405100 dated February 28, 1999, is a non-stock, non-profit association 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. 57284; and that the purposes [1] for which the association was incorporated are:

> *To establish, own, manage, maintain and operate country clubs, club houses, recreational, athletic and social centers, and facilities, golf course, tennis courts, pelota courts, gymnasium, resorts, inns, town houses and such other sports, entertainment or recreational establishments and facilities; and to foster, promote and develop sports and athletic programs, contests, meets and conferences in the Philippines as well as other countries; and*
>
> *In furtherance thereof or as may be necessary or incidental to the foregoing purposes and objectives, the Corporation may conduct and engage in the following activities;*
>
> *1. To acquire by purchase, lease, grant or in any other legal manner, real properties, lands or interest in such real properties or real*

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*rights. To subdivide said lands and to construct thereon houses, buildings, condominiums, roads, bridges, alleys and other improvements; and to build, develop or introduce on such real properties or land acquired, owned or possessed by the Corporation, golf courses, resorts, club houses, town houses, and such other sports and recreational and entertainment facilities, including any and all kinds of improvements thereon which may enhance value or increase the utility thereof or otherwise lease, exchange, dispose of, donate, encumber or otherwise deal with such estate or real properties or estate therein as may be deemed necessary and proper under the circumstances to extend permitted by applicable laws and regulation.*

2. *To acquire or obtain from the government or authority, whether national, provincial, municipal or any subdivisions or instrumentality thereof, or any private corporation, association, persons, or other entities, whether domestic or foreign, such charter licenses, franchises, rights of way or privileges, concessions, contracts and such other rights and privileges as may be deemed necessary or incidental to the operation of the object and purposes of the corporation.*

3. *To invest and deal with the moneys and properties of the Corporation in such manner as may from time to time be considered wise and expedient for the advancement of its interest and to sell, exchange, lease, pledge, mortgage or create a lien upon such properties, rights or goodwill of the corporation or any part thereof for such consideration and under such term as it shall see fit to accept.*

4. *To borrow or raise money necessary to meet the financial requirements of its operation by the issuances of bonds, promissory notes and other evidence of indebtedness, and to secure the repayment of any money borrowed or properties so acquired by mortgage, pledge, deed of trust, encumbrances or liens upon the properties and assets of the corporation as may be allowed by applicable laws and regulations.*

5. *To do and perform any and all other acts and things necessary or incidental to the operation and attainment of the corporate objects and purposes including the exercise of such authorities, attributes and incidents allowed by laws to corporations in general and to corporations of like nature in particular.*

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

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"*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) Nonstock 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;"*

xxx xxx xxx"

"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.*" [2] "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.*" [3]

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, 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.*

In the submitted documents of **FILIPINAS GOLF & COUNTRY CLUB, INC.**, it was disclosed that all members of the Board of Trustees are entitled to per diem. Treasurer's Certification by **FILIPINAS GOLF & COUNTRY CLUB, INC.**'s _____ BBB, dated May 27, 2014, states that:

*"All members of the Board of Directors receive per diem of Five Thousand Pesos (Php5,000.00), for every attendance in Board Meeting."*

The giving of per diem to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **FILIPINAS GOLF & COUNTRY CLUB, 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, **FILIPINAS GOLF & COUNTRY CLUB, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

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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 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 **FILIPINAS GOLF & COUNTRY CLUB, 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, **FILIPINAS GOLF & COUNTRY CLUB, 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.

Please be guided accordingly.

Very truly yours,

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

**Footnotes**

1. First, Amended Articles of Incorporation.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
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].

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