November 21, 2016

BIR RULING NO. 402-16

Article IX-D, 1987 Philippine Constitution;
RR 16-2005; RMO 23-14

Palacio Del Gobernador Condominium Corporation
Gen. Luna St., cor. A. Soriano St., Intramuros, Manila

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 19, 2013 requesting that the **PALACIO DEL GOBERNADOR CONDOMINIUM CORPORATION (PDGCC)** be given authority to withhold five percent (5%) Final Value-Added Tax (VAT) on their payments to the MANILA ELECTRIC COMPANY (MERALCO) and/or other utilities.

It is represented that **PDGCC** is a government-owned or controlled corporation (GOCC), audited by the Commission and Audit and registered with Revenue District Office No. 33-Intramuros, Manila. The Revenue District Officer of RDO No. 33 has denied the request of **PDGCC** to deduct the 5% Final VAT on the ground that the latter "failed to present proofs *(sic)* and/or documents to show that" it is a government-owned or controlled corporation.

In reply, this Office is of the opinion that the mere fact that the **PDGCC** is being audited by the Commission on Audit already raises a presumption that it is a GOCC obligated under Section 4.114-2 of Revenue Regulations No. 16-2005 to withhold VAT at the rate of 5% of the gross payments for goods and/or services taxed at twelve percent (12%) VAT.

It should be noted that the Commission on Audit is given the following functions under Article IX-D of the 1987 Philippine Constitution:

> SECTION 2 (1). The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of,

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and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

The Office of the Government Corporate Counsel has also opined, in Opinion No. 029 Series of 2003 and dated March 5, 2003, that the PDGCC "is a government-owned or controlled corporation as defined in the Administrative Code of 1987 and Administrative Order No. 59, Series of 1988."

Thus, **PDGCC** must withhold the 5% VAT on its purchase of services from the Manila Electric Company (MERALCO) and other utilities, in accordance with Section 4.114-2 of Revenue Regulations No. 16-2005, [1] as enunciated in Revenue Memorandum Order No. 23-14, [2] which provides:

SECTION 4.114-2. ***Withholding of VAT on Government Money Payments and Payments to Non-Residents.*** —

(a) The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at 10% VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof.

The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining five percent (5%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT exceed five percent (5%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT is less than 5% of gross payment, the difference must be closed to expense or cost. x x x

Otherwise, it shall be held liable for violations Sections 251, 255 and 272 of the National

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Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Consolidated Value-Added Tax Regulations of 2005.
2. Obligations of Government Agencies, Bureaus and Instrumentalities as Withholding Agents.

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