April 5, 2018

BIR RULING NO. 600-18

Section 101 of the Tax Code of 1997, as amended; BIR Ruling No. 327-16; BIR Ruling No. 230-16; BIR Ruling No. 120-16; BIR Ruling No. 244-14

Food and Nutrition Research Institute
General Santos Avenue, Bicutan
Taguig City

Attention: *Mario V. Capanzana, Ph.D.*
Director

Gentlemen :

This refers to your letter dated August 29, 2017 requesting for the issuance of a ruling that will govern the availment of tax incentives available to donors in connection with the Malnutrition Reduction Program (MRP) that is being implemented by the Department of Science and Technology (DOST) through the Food and Nutrition Research Institute (FNRI).

It is represented that the MRP addresses the undernutrition problem among young children; that it has two (2) components, to wit: 1) DOST PINOY (Package for the Improvement of Nutrition of Young Children) and; 2) technology transfer of the complementary food technology; that MRP was one of the government's priority programs and was included in the National Economic Development Authority's (NEDA) National Priority Plan (NPP) for three (3) consecutive years (2015-2017); and that under the NPP, all companies or institutions that will donate to any of the programs in the list are entitled to full tax deduction equivalent to their donations.

It is further represented that under the draft guidelines on the availment of the tax incentives for the MRP, donations shall refer to the complementary food blends, such as the rice-mongo instant blend, ready-to-cook rice-mongo-sesame blend, or any other nutritional food product developed by DOST-FNRI for the MRP, bought by the donor/s from any of the Complementary Food Production Facilities (CFPF) nationwide and distributed to their chosen beneficiaries; that donation can also be in the form of money, land, equipment and other items donated by the donor/s to their chosen beneficiaries in support to the MRP; and that beneficiaries shall refer to the DOST-FNRI, local

Copyright 2020 CD Technologies Asia, Inc.

government units (LGUs), non-governmental organizations (NGOs) accredited by the Philippine Council for NGO Certification (PCNC), and public schools chosen by the donors to receive the donations.

In reply, please be informed as follows:

DONOR'S TAX

Section 98 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that transfers by any person, resident or nonresident, by gift, of property, real or personal, are generally subject to donor's tax. Section 98 reads:

"*CHAPTER II — DONOR'S TAX*

SEC. 98. Imposition of Tax. —

(A) there shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift, a tax, computed as provided in Section 99.

(B) the tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

XXX XXX XXX"

However, certain transfers are exempt from donor's tax such as the donations made by residents and non-residents to entities enumerated under Section 101 of the NIRC of 1997, as amended. The aforesaid Section states:

"SEC. 101. [1] *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) 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

(2) Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, foundation, trust or philanthropic organization or research institution or organization: Provided, however, That not more than thirty percent (30%) of said gifts shall be used by such donee for administration purposes.

XXX XXX XXX

(B) In the Case of Gifts Made by a Nonresident not a Citizen of the Philippines.

Copyright 2020 CD Technologies Asia, Inc.

—

(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.

(2) Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, foundation, trust or philanthropic organization or research institution or organization. Provided, however, That not more than thirty percent (30%) of said gifts shall be used by such donee for administration purposes."

xxx xxx xxx

Considering that the beneficiaries of the MRP, as defined in the draft guidelines, shall refer to the DOST-FNRI, LGUs, NGOs accredited by the PCNC, and public schools, then any donation made in favor of any of the foregoing beneficiaries under the MRP shall be exempt from donor's tax, pursuant to the afore-quoted provisions of the NIRC of 1997, as amended. In case the donation is made in favor of the NGOs, the tax exemption is subject to the condition that not more than thirty percent (30%) of the value of donation or gift shall be used for their administration purposes.

DEDUCTIBILITY OF THE DONATIONS

The deductibility of the donations made under the MRP shall be governed by the following rules as set forth under Section 34 (H) of the 1997 Tax Code, as amended, to wit:

"SEC. 34. Deductions from Gross Income. — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section, [2] in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;

xxx xxx xxx

(H) Charitable and Other Contributions. —

(1) In General. — Contributions or gifts actually paid or made within the taxable year to, or for the use of the Government of the Philippines or any of its agencies or any political subdivision thereof exclusively for public purposes, or to accredited domestic corporation or associations organized and operated exclusively for religious, charitable, scientific, youth and sports development, cultural or educational purposes or for the rehabilitation of veterans, or to social welfare institutions, or to non-government organizations, x x x, no part of the net income of which inures to the benefit of any private stockholder or individual in an amount not in excess of ten percent (10%) in the case of an individual, and five percent (5%) in

Copyright 2020 CD Technologies Asia, Inc.

the case of a corporation, of the taxpayer's taxable income derived from trade, business or profession as computed without the benefit of this and the following subparagraphs.

(2) Contributions Deductible in Full. — Notwithstanding the provisions of the preceding subparagraph, donations to the following institutions or entities shall be deductible in full:

(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;

(b) x x x;

(c) Donations to Accredited Non-government Organizations. — The term "non-government organization" means a non-profit domestic corporation:

(1) Organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inure to the benefit of any private individual;

(2) Which, not later than the 15th day of the third month after the close of the accredited non-government organizations taxable year in which contributions are received, makes utilization directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated, unless an extended period is granted by the Secretary of Finance in accordance with the rules and regulations to be promulgated, upon recommendation of the Commissioner;

(3) The level of administrative expense of which shall, on an annual basis, conform with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, but in no case to exceed thirty percent (30%) of the total expenses; and

(4) The assets of which, in the event of dissolution, would be distributed to another nonprofit domestic corporation organized for similar purpose or purposes, or to the state for public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of said court shall best accomplish the general purpose for which the dissolved organization was

Copyright 2020 CD Technologies Asia, Inc.

organized."

xxx xxx xxx

Applying the foregoing, donations under the MRP during the years 2015-2017 in favor of the DOST-FNRI, LGUs and public schools are entitled to full deductibility since MRP was included in the NEDA's NPP for the years 2015 to 2017. For donations made during the years without the NEDA's certification of inclusion in the NPP, the same shall be subject to the 10% or 5% limitation, as the case may be. On the other hand, donations made in favor of an NGO shall only be entitled to full deductibility when said NGO has been duly accredited by the PCNC, the accrediting entity of NGOs designated by the Secretary of Finance pursuant to Memorandum of Agreement dated January 29, 1998. Donations made to NGOs without the PCNC accreditation shall be subject to the 10% or 5% limitation, as the case may be.

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,

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

Footnotes

1. As amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN).
2. As amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN).

Copyright 2020 CD Technologies Asia, Inc.