April 12, 2018

BIR RULING NO. 652-18

Section 30 (E) of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 143-2016

Reyes Tacandong & Co.
PHINMA Plaza, 39 Plaza Drive,
Rockwell Center, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 04, 2013, requesting on behalf of your client, **UYTENGSU FOUNDATION, INC.**, for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that **UYTENGSU FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 9RC0000404064 dated June 30, 1994, is a non-stock, non-profit corporation 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. 48028 dated July 3, 1972; and that the purposes [1] for which the corporation was incorporated are:

> *"To furnish financial assistance for religious, charitable and/or educational purposes principally through Ellinwood-Malate Church, Silliman University and the Cebu Christian School, as may be determined or decided by the Board of Trustees of Uytengsu Foundation, Inc.; and generally, to carry out religious, educational, charitable and other eleemosynary or humanitarian activities, for the promotion of the welfare of the community in general and not for financial gain or profit."*

In reply, please be informed that your request on behalf of your client, **UYTENGSU FOUNDATION, INC.**, for tax exemption as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code of 1997, as

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amended, is hereby denied for lack of factual basis.

Section 30 (E) of the National Internal Revenue Code of 1997, as amended, provides, *viz.*:

> *"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) Non-stock 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;"*

Under the above provision, the tax exemption can only be availed of by, among others, a charitable corporation or association if it meets the following conditions:

1. It is a non-stock corporation or association;
2. It is organized exclusively for charitable purposes;
3. It is operated exclusively for charitable purposes; and
4. 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.

Section 87 of the Corporation Code of the Philippines defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees, or officers" and that any profit "obtain[ed] 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] In the case of *Lung Center of the Philippines v. Quezon City*, [3] cited in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*, [4] it was held that any profit by a charitable institution must not only be plowed back "whenever necessary or proper," but must be "devoted or used altogether to the charitable object which it is intended to achieve."

As regards the second and third conditions, Section 30 (E) of the National Internal Revenue Code of 1997, as amended, requires that both the organization and operations of the charitable institution must be devoted "exclusively" for charitable purposes. The *organization* of the institution refers to its corporate form, as shown by its Articles of Incorporation, By-Laws and other constitutive documents. [5] The *operations* of the charitable institution, on the other hand, generally refer to its regular activities which must be exclusive to charity. [6]

Furthermore, Section 30 (E) of the National Internal Revenue Code of 1997, as

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amended, necessitates that no part of the association's net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

After a careful perusal of the documents submitted, it is found that **UYTENGSU FOUNDATION, INC.** failed to meet the third condition or the operational test. It is noted that the subject corporation has been organized and incorporated on July 3, 1972 or more than forty-five (45) years as of this date but, as can be gleaned from its Audited Financial Statements for the years 2012, 2011, and 2010, it has not shown any charity-oriented projects/activities undertaken in pursuit of its charitable purposes as represented in its Articles of Incorporation. An evaluation of the accounts presented in the Audited Financial Statements shows that interests and dividends are its only sources of revenues and that one hundred percent (100%) of its expenses/disbursements are for administrative expenses only, particularly professional fee, taxes and licenses, and miscellaneous.

It must be emphasized that to be tax-exempt, a corporation or association claiming to be a charitable institution must not only be organized as such but must also undertake activities exclusive to charity, and that any profits it may have obtained as an incident to its operations must be devoted or used altogether to the charitable object which it is intended to achieve.

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."* [7] 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."* [8]

Hence, **UYTENGSU FOUNDATION, INC.** shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 143-2016 dated April 21, 2016)***

Moreover, Section 105 of the National Internal Revenue Code of 1997 provides that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the same Code.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

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Accordingly, if **UYTENGSU FOUNDATION, INC.** is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, its revenues derived therefrom shall be subject to the twelve percent (12%) VAT, in case the gross receipts from such sales exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00), or to the three percent (3%) percentage tax, if gross receipts do not exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00).

It must be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. Being an indirect tax, the amount of tax may be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Second provision, Articles of Incorporation of Uytengsu Foundation, Inc.
2. Section 87, Corporation Code of the Philippines.
3. G.R. No. 144104 dated 29 June 2004.
4. G.R. Nos. 195909 and 195960 dated 26 September 2012.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. *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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