April 13, 2018

BIR RULING NO. 689-18

Section 30 (E) of the Tax Code of 1997;
BIR Ruling No. 001-2017; BIR Ruling No.
444-2014

Malolos Diocese Social Action Center, Inc.
3rd Floor Chancery Building, Poblacion
City of Malolos, Bulacan 3000

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 21, 2015, with attachments, requesting on behalf of MALOLOS DIOCESE SOCIAL ACTION CENTER, INC. for the issuance of a certificate of tax exemption enjoyed by non-stock, non-profit corporation or association pursuant to Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that MALOLOS DIOCESE SOCIAL ACTION CENTER, INC. with BIR Taxpayer's Identification Number (TIN) 000-000-000 and Certificate of Registration No. OCN4RC0000859819 dated March 14, 2015, is a non-stock, non-profit association duly organized under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. CN201503423 dated February 24, 2015; and that the purposes for which the corporation/association was incorporated is (in general) *to provide the organizational medium for assisting in the identification, assessment and selection of sites in the Diocese of Malolos for comprehensive community-based program designed to promote economic self-sufficiency, improved health, ecological and environmental awareness, disaster preparedness, justice and peace, social teachings and better mass education for the identified communities; the grant and distribution of economic, medical, educational, managerial and technical assistance to the said communities; and the implementation, monitoring and evaluation of such programs. Also to coordinate, cooperate and collaborate with other foundations, institutions and organizations, as well as individuals, whether domestic or foreign, who are engaged in providing economic, medical and other forms of assistance to the Philippines in general and to the Diocese of Malolos.*

In reply, please be informed that this Office cannot as yet issue the requested

Copyright 2020 CD Technologies Asia, Inc.

ruling/certificate of tax exemption because MALOLOS DIOCESE SOCIAL ACTION CENTER, INC. has to prove by actual operation for at least three (3) years that it is really an organization exempt from income tax under Section 30 of the National Internal Revenue Code of 1997, as amended *(BIR Ruling No. 001-2017 dated January 05, 2017)*.

In the meantime, MALOLOS DIOCESE SOCIAL ACTION CENTER, INC. is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, on its income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation.

Likewise, interest income from currency bank deposits and yield or any other monetary benefits from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the 20% final withholding tax: provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 15% [1] final withholding tax pursuant to Section 27 (D) (1), in relation to Section 57 (A), both of the Tax Code of 1997, as amended *(BIR Ruling No. 444-2014 dated October 30, 2014)*.

Also, it should be understood that MALOLOS DIOCESE SOCIAL ACTION CENTER, INC. shall be constituted as withholding agent of the government if it acts as an employer and its employee receives compensation income subject to the withholding tax under Section 79 (A), Chapter III, Title II of the National Internal Revenue Code of 1997, as amended, as implemented by Revenue Regulations No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the Tax Code of 1997, also as implemented by Revenue Regulations No. 2-98, as amended.

Moreover, under Section 235 of the National Internal Revenue Code of 1997, as amended, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organization or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which it has been granted tax exemptions or tax incentives, and its tax liabilities, if any.

Furthermore, it is subject to the payment of the annual registration fee of Five Hundred Pesos (PhP500.00) as prescribed in Section 236 (B) of the National Internal Revenue Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code (*Revenue Memorandum Circular [RMC] No. 76-2003*).

Value-Added Tax/Percentage Tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides

Copyright 2020 CD Technologies Asia, Inc.

that:

> *"SEC. 105. Persons Liable. — 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*
>
> xxx xxx xxx
>
> *The phrase "in the course of trade of 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."*

Accordingly, if MALOLOS DIOCESE SOCIAL ACTION CENTER, 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 12% VAT, in case the gross receipts from such sales exceed Three Million Pesos (P3,000,000.00), [2] or to the 3% percentage tax, if gross receipts do not exceed P3,000,000.00.

Notwithstanding that it is a non-stock, non-profit corporation, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% VAT pursuant to Sections 106 and 107 of the said Code.

It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can 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.

However, revenue from contributions and donations, not being derived from sale of services or sale of goods made in the cause of business but rather in connection with its non-stock, non-profit activities, is exempt from the 12% VAT.

Finally, for purposes of securing a tax exemption ruling after the three (3)-year period, MALOLOS DIOCESE SOCIAL ACTION CENTER, INC. is required to submit the following documents pursuant to Revenue Memorandum Order No. 20-2013:

a. Original copy of application letter for issuance of Tax Exemption Ruling. The letter shall cite the particular paragraph of Section 30 of the NIRC, as amended, under which the application for exemption/revalidation is being based;

Copyright 2020 CD Technologies Asia, Inc.

b. Certified true copy of the latest Articles of Incorporation and By-Laws issued by the Securities and Exchange Commission with the following provisions:

   1) That the corporation is non-stock, non-profit;

   2) That no part of the net income shall inure to the benefit of any of its members;

   3) That the trustees do not receive compensation; and

   4) In case of dissolution, assets of the corporation shall be transferred to similar institution or to the government.

c. Original copy of Certification under Oath by an executive officer of the corporation or association as to:

   1) all previous amendments/changes in the Articles of Incorporation and By-Laws,

   2) manner of activities, and

   3) the sources and disposition of income, if any, of the subject corporation or association. If there are no amendments/changes, the Certification shall state this fact.

   If there are no amendments/changes in the Articles of Incorporation and By-Law, the Certification shall state this fact;

d. Certified true copy of the Certificate of Registration with the BIR;

e. Original copy of the Certification under Oath by the Treasurer of the corporation or association as to the amount of income, compensation, salaries or any emoluments paid by the corporation or association to its trustees, officers and other executive officers. Provided, that, a corporation sole, which, by its nature, does not have trustees, corporate officers or executive officers need not submit the certification required under this subparagraph;

f. Original copy of the Certification issued by the RDO where the corporation or association is registered that the corporation or association is not the subject of any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal; or if thereby be any, the Original copy of the

Copyright 2020 CD Technologies Asia, Inc.

Certification issued by the RDO on the status thereof;

g. Certified true copies of the Income Tax Returns or Annual Information Returns and Financial Statements of the corporation or association for the last **three** (3) years; and

h. Original copy of a statement under Oath by an executive officer of the corporation or association as to its *modus operandi* which shall include:

1) A full description of the past, present, and proposed activities of the corporation or association;

2) A narrative description of anticipated receipts and contemplated expenditures; and

3) A detailed description of all revenues which it seeks to be exempted from income tax. All other revenues which are not included in the statement/application shall be subject to income tax.

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.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Republic Act No. 10963 increased the tax rate from 7.5% to 15% effective Jan. 1, 2018.
2. Republic Act No. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective Jan. 1, 2018.

Copyright 2020 CD Technologies Asia, Inc.