REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

August 3, 2012

REVENUE MEMORANDUM CIRCULAR NO. 35-2012

SUBJECT : Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes.

TO : All Revenue Officials, Employees and Others Concerned

This Circular is issued to clarify the taxability of clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes.

BACKGROUND

Section 26(H) of Presidential Decree No. 1158, otherwise known as the National Internal Revenue Code of 1977, provides that clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes (hereinafter referred to as "recreational clubs") were exempt from income tax. This provision, however, was deleted in the National Internal Revenue Code of 1997, as amended. Despite this, however, several BIR rulings[1] were issued declaring that such recreational clubs are exempt from income tax and Value Added Tax (VAT).

DISCUSSION

The liability for income tax and VAT of recreational clubs are discussed hereunder.

a. Income Tax

Clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes are subject to income tax under the National Internal Revenue Code of 1997,

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[1] BIR Ruling DA-466-05 dated November 18, 2005 issued in favor of Club Punta Fuego, Inc.; BIR Ruling DA-569-07 dated October 26, 2007 issued to Baguio Country Club Corporation; and BIR Ruling NSNP-(S30E-159)810-09 dated December 22, 2009 issued to Caliraya Resort Club, Inc.

as amended. According to the doctrine of *casus omissus pro omisso habendus est*, a person object or thing omitted from an enumeration must be held to have been omitted intentionally. The provision in the National Internal Revenue Code of 1977 which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under National Internal Revenue Code of 1997, as amended. Hence, the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees are subject to income tax.

b. Value Added Tax

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

> "SECTION 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 this Code.
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> 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 nonstock, nonprofit 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." (Emphasis supplied)

The above provision is clear -- even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. This conclusion was affirmed by the Supreme Court in Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2000. In this case, the Supreme Court held:

> "(E)ven a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.
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> The definition of the term "in the course of trade or business" incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.

Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration."

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Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT."

Clearly, the gross receipts of recreational clubs including but not limited to membership fees, assessment dues, rental income, and service fees are subject to VAT.

Any ruling or revenue issuance which is inconsistent herewith is hereby amended, repealed or modified accordingly.

This Circular takes effect immediately.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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