REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

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REVENUE MEMORANDUM CIRCULAR (RMC) NO. 63 - 2023

SUBJECT : Revocation of BIR Ruling Nos. 038-2001 and 046-1995

TO : All Internal Revenue Officials, Employees and Others Concerned

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This Circular is being issued to revoke BIR Ruling Nos. 038-2001 (dated September 10, 2001) and 046-1995 (dated March 3, 1995) which ruled that CDC is considered as a business enterprise because it was formed in accordance with the Philippine Corporation Law and existing rules and regulations promulgated by the Securities and Exchange Commission ("**SEC**") and is performing activities that are proprietary in nature. Therefore, CDC is entitled to the same privileges as other enterprises operating within the Clark Special Economic Zone ("**CSEZ**") such as the five percent (5%) preferential tax rate based on gross income earned, in lieu of local and national internal revenue taxes.

It has been observed that, while it is true that CDC is a private corporation and performing activities that are proprietary in nature, the fact still remains that it is a GOCC entrusted with the responsibility of carrying out regulatory functions. As such, it does not stand on equal footing with business enterprises operating within CSEZ, thereby precluding it from claiming the same privileges available to them.

A GOCC refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock.[1] CDC is a stock corporation vested with functions relating to public needs and owned by the Government of the Philippines through BCDA. CDC was established to manage the CSEZ.[2] CDC has the following powers and functions, among others, under Section 13 of RA No. 7916:[3]

a. to operate, administer, manage and develop the CSEZ according to the principles and provisions under the law;
b. to register, regulate and supervise the enterprises in the CSEZ in an efficient and decentralized manner;
c. to coordinate with local government units and exercise general supervision over the development, plans, activities and operations of the CSEZ;
d. to construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license, bulk purchase from private sector or joint venture adequate facilities and infrastructure; and

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[1] Republic Act No. 10149, An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or -Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and For Other Purposes, June 6, 2011.
[2] Section 1, Executive Order No. 80, series of 1993, April 3, 1993.
[3] On February 21, 1995, EPZA became PEZA due to the enactment of Republic Act No. 7916.

e. to create, operate and/or contract such agencies and functional units or offices of the authority as it may deem necessary.

In light of the above, despite being structured as a stock corporation, it is evident that CDC is a GOCC that operates and performs as a regulatory agency. Thus, unless there is a law that expressly states otherwise, CDC must be treated on par with other GOCCs regardless of its formation or the nature of its operations. Consequently, its income shall be subject to income tax provided in Section 27(C) of the Tax Code.

Assuming arguendo that CDC is correctly treated as a business enterprise, the Bureau's position remains unchanged. It must be noted that upon passage of CREATE Law, Section 12(c) of RA No. 7227, as amended, was repealed and the availment of fiscal incentives becomes limited only to business enterprises registered with IPAs.

Under the CREATE Law, IPAs and RBEs are two separate and distinct entities with different purposes and functionalities. RBE refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under the Philippine laws and registered with an IPA whether inside or outside the zones, which are granted fiscal and/or non-fiscal incentives to the extent of their approved registered project or activity under the Strategic Investment Priority Plan ("**SIPP**"). On the other hand, IPAs refer to government entities created by law, executive order, decree or other issuance, in charge of promoting investments, granting and administering fiscal and/or non-fiscal incentives, and overseeing the operations of the different economic zones and freeports in accordance their respective special laws. Hence, it clear that, in the eyes of the Legislature, an entity may either be classified as an IPA or an RBE, but can never be both. Section 293(H) of the Tax Code explicitly states that CDC is an IPA.

Such being the case, while CDC is performing functions that are proprietary in nature, it is classified as an IPA as defined and contemplated under the CREATE Law, its IRR and other related rules and regulations. Therefore, CDC cannot avail of the fiscal and non-fiscal incentives which are exclusively granted to RBEs.

In this regard, BIR Ruling Nos. 038-2001 and 046-1995 are hereby revoked and invalidated, and all revenue issuance inconsistent with this Circular are deemed repealed without prejudice to Section 246 of the Tax Code.

All revenue officials and employees are enjoined to give this Circular the widest possible publicity.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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