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Charitable institutions not taxable?

REGARDLESS of who is directing the reins of the government, Filipinos, in one way or another, cannot escape the downside of living in a Third-World country. Some are fortunate enough to succeed in life and are able to live comfortably, depending on what their definition of comfortable is. Some, on the other hand, could not even shelter themselves or provide for their sustenance. Nevertheless, the caring and compassionate nature of Filipinos led to the establishment of a handful of charitable organizations aimed at alleviating the suffering of the underprivileged.

What is the legal definition of a charitable institution? According to the Supreme Court, a charitable institution is an association of individuals "organized not for profit but for more elevated purposes, charitable, humanitarian, etc." (GR L-1222). Notwithstanding their noble cause, they are still subject to tax. You can't blame the government for squeezing as much income as possible in order to sustain itself and finance its projects. But as a form of recognition, and maybe to encourage the participation of private individuals in such humanitarian endeavor, the government grants certain tax concessions to these institutions.

Income-tax exemption

For a charitable institution to be exempted from income tax, it has the burden to prove that: (1) it is, in fact, a nonstock corporation; (2) it is organized and operated exclusively for charitable purposes; and (3) 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. However, any income generated by such institution from any kind of activity or endeavor conducted for profit will be subject to tax, regardless of how that income is used or would be used. Clearly, being a charitable institution per se does not ipso jure exempt its income from taxation. It is imperative that the source of its income is from any activity that is in line with its charitable purpose.

Thus, income derived from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangements are subject to 20-percent final withholding tax. If such interest income is from a depository bank under the expanded foreign-currency deposit system, it shall be subject to a 7.5-percent final withholding tax. Furthermore, income from royalties received from sources within the Philippines shall also be subject to 20-percent final withholding tax. (BIR Ruling 153-11).

Real-estate tax exemption

As for its real property, the Constitution provides that all lands, buildings and improvements, actually, directly and exclusively used for charitable purposes are exempt from taxation. A strict interpretation of the provision suggests that not all real property owned by a charitable institution are nontaxable. It must be proved that such property or pieces of property are used actually, directly and exclusively for the furtherance of its purpose. Furthermore, such exemption pertains only to property tax. Income generated by their property, such as rentals or parking fees, is still subject to income tax regardless of whether it is used for charitable purposes or not (GR 124043).

Donor's tax exemption and deductibility of donations

As taxes are the lifeblood of the government, it can also be said that donations are the lifeblood of a charitable institution. To ensure the continuous support of the private sector, the donations would not be subject to the usual taxes and limitations, which would otherwise be imposed if not made to a charitable or similar institutions.

Donations made in favor of charitable institutions are exempted from donor's tax. Nevertheless, for the donor to avail himself/herself of such exemption, the institution must not use more than 30 percent of such gifts for administration purposes.

Likewise, donors can either partially or fully deduct the contributions they made from the computation of their gross income. If the donee-institution is accredited by the Philippine Council for NGO Certification, an individual donor is entitled to a limited deductibility in an amount not in excess of 10 percent of his income derived from trade, business or profession as computed without the benefit of this deduction. As for a corporate donor, the ceiling is 5 percent.

For full deductibility, three requisites must concur. First, such donation must be used by the institution directly for the furtherance of its purpose and not later than the 15th day of the third month after the close of its taxable year in which the gift was received. Second, the annual administrative expenses of the institution should not exceed 30 percent of its total expenses. Lastly, in the event of dissolution, its assets must be distributed to another accredited NGO organized for the same purpose or to the state to be used for public purpose.

Whether you are the donor or the recipient-donee institution, there are requisites to be followed for the full entitlement to the tax benefits allowed in transacting with charitable institutions. Some of these guidelines are summarized in Revenue Regulations 13-98.

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