REVENUE MEMORANDUM CIRCULAR NO. 78-2022 issued on June 9, 2022 clarifies the Income Tax treatment of the different classifications of educational institutions and their tax obligations.

This Circular covers the following educational institutions and their Income Tax treatment, to wit:

A. Proprietary Educational Institution - refers to any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education (DepEd), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

   i. Domestic Corporation - The income of a proprietary educational institution that is considered a "corporation", as defined under Section 22(B) of the Tax Code, and is organized in or existing under the laws of the Philippines, is subject to the ten percent (10%) preferential Income Tax rate under Section 27(B) of the Tax Code. Provided, that beginning July 1, 2020 until June 30, 2023, the tax rate imposed shall be one percent (1%).

      Moreover, all domestic non-stock, non-profit (NSNP) educational institutions whose net income or assets accrue/inure to or benefit any member or specific person shall likewise be subject to the ten percent (10%) preferential Income Tax rate under Section 27(B) of the Tax Code. Provided, that beginning July 1, 2020 until June 30, 2023, the tax rate imposed shall be one percent (1%).

      If the gross income of the domestic corporation proprietary educational institution - including NSNP educational institution in the preceding paragraph insofar as its revenues or income not used actually, directly and exclusively for educational purposes are concerned - from 'unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income it derived from all sources, the regular Corporate Income Tax prescribed in Section 27(A) of the Tax Code shall be imposed on the entire taxable income of the said institution.

      The term 'unrelated trade, business or other activity' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution of its primary purpose or function.

   ii. Others - The other proprietary educational institutions that are not organized as domestic corporations are taxable as follows:

      a. Individual - The income of an individual, trust, or estate that owns the proprietary educational institution as a sole proprietor, is taxable under Sections 24 and 25 of the Tax Code, and the applicable tax rates shall depend on the citizenship and residence of such individual, trust, or estate.

      b. Other Corporations - The income of a corporation, as defined under Section 22(B) of the Tax Code, that is not organized as domestic corporation but is classified as resident foreign corporation, is taxable under Section 28(A) of the Tax Code.

B. Government Educational Institution - refers to a public university or college that is fully owned and subsidized by the government. A government educational institution (GEI) may be created through a charter or a law passed by the Congress of the Philippines.

   i. Express Provision in Charter or Law - If the GEI has a charter and the charter expressly provides that it is exempt from taxes, then such GEI is exempt from applicable taxes as may be provided in the aforesaid charter.

   ii. No Express Provision in Law - If the GEI's charter does not expressly provide that it is exempt from tax, it is nonetheless exempt from Income Tax on the income received as such pursuant to Section 30(I) of the Tax Code.

C. Non-stock and Non-profit (NSNP) Educational Institution - All revenues and assets of an NSNP educational institution used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties, pursuant to Paragraph 3, Section 4, Article XIV of the 1987 Constitution, and as reiterated in Section 30 of the Tax Code. For the Constitutional exemption to be enjoyed, the NSNP educational institutional must comply with the two requisites: (1) the school must be NSNP; and (2) the income is actually, directly and exclusively used for educational purposes.

To avail of the exemption, the taxpayer must factually prove that its income or revenues are used actually, directly and exclusively for educational purposes, and that no net income or asset accrues to the benefit of any member of the corporation. For this purpose, the NSNP educational institution shall submit, together with the required annual Income Tax return, a detailed breakdown of the expenses defrayed from each nature of revenues/income or an accounting for those actually, directly and exclusively used for educational purposes for the exemption to set in.

Contributions or gifts/donation to educational institution may be subject to the following treatment:

A. Deduction from Gross Income of Donor

Contributions or gifts actually paid or made within the taxable year to domestic corporations organized and operated exclusively for educational purposes may be allowed as deduction from the gross income of the donor, in an amount not in excess of ten percent (10%) in the case of an individual, and five percent (5%) in the case of a corporation, of the donor's taxable income; provided, that no part of the net income or asset of the donee corporation inures to the benefit of any individual or private stockholder; provided further, that if the conditions under Section 34(H)(2)(c) of the Tax Code are complied with, the contributions or gifts may be deductible in full.

B. Exemption from Donor's Tax

Certain gifts or donations in favor of an NSNP educational institution may be exempt from Donor's Tax, subject to the condition that not more than thirty percent (30%) of said gifts shall be used by the donee institution for administration purposes.

C. Withholding Tax obligations as income payor

An educational institution shall be constituted as a withholding agent for the government if it acts as an employer and its employee/s receive compensation income subject to Withholding Tax under Section 79(A) of the Tax Code, as amended, or if it makes income payments to individuals or corporations subject to Withholding Tax pursuant to Section 57 of the Tax Code, as amended.

D. Withholding tax on income received

a. NSNP educational institutions shall not be subject to any creditable or final Withholding Tax on their revenues and assets used actually, directly and exclusively for educational purposes as provided under the Constitution.

For this purpose, existing NSNP educational institutions shall continue to present to withholding agents their duly issued Certificate of Income Tax exemption or exemption rulings, and Securities and Exchange Commission (SEC) registration.

Newly-organized NSNP educational institutions must secure their Certificate of Tax Exemption within three (3) months from the issuance of their Certificate of Registration with the SEC.

b. The income payments to proprietary educational institutions, including NSNP educational institutions, which are subject to preferential Income Tax under Sec. 27(B) are subject to creditable and final Withholding Taxes. The creditable Withholding Tax on the income payments to these institutions should not be more than the statutory Income Tax rate imposed on proprietary educational institutions under Section 27(B) of the Tax Code.
c. The income payments to educational institutions organized as sole proprietorships under Sec. 24(A)(2)(a) or Sec. 24(A)(2)(b) are also subject to Creditable and Final Withholding Taxes.

All educational institutions are required to comply with the following:

a. Register with the BIR, both primary and secondary – secure Authority to Print Receipts/Invoices, register Books of Accounts and update registration information
b. Issue receipts/invoices
c. File tax returns
d. Secure Certificate of Income Tax Exemption

The details of the said compliance requirements are specified in the Circular.