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

Sections 28 (B) (1), 42 (C) (3), 108 (A), Tax Code; Section 2.57.1 (I) of the Revenue Regulations No. 2-98, as amended; Revenue Regulations No. 16-2005, as amended
BIR Ruling No. OT-100-2021
OT- 025 - 2023
APR 12 2023

SYCIP GORRES VELAYO & CO.
6760 Ayala Avenue
1226 Makati City
Philippines

Attention: **FIDELA I. REYES**
Partner, Tax Services

Gentlemen:

This refers to your request on behalf of your client, UPS Asia Group Pte. Ltd. ("**UPS Asia**"), for confirmation that income earned from its Regional Transportation Services Agreement ("**RTSA**") with UPS SCS Philippines, Inc. ("**SCS**") is not subject to: (1) Philippine income tax and consequently to withholding tax; and (2) value-added tax ("**VAT**"), pursuant to Sections 42 (A) (3) and (C) (3) in relation to Sections 28 (B) (1) and 23 (F) of the National Internal Revenue Code of 1997, as amended ("**Tax Code**").

Background

1. UPS Asia, a non-resident foreign corporation organized under the laws of Singapore,[1] is a tax resident of Singapore for income tax purposes for the calendar year 2021[2] and not registered as a corporation or partnership in the Philippines.[3]

2. UPS Asia does not have any office or place of business in the Philippines. It has no branches or permanent establishments in the Philippines.

3. SCS is a corporation organized and existing under the law of the Philippines.

4. UPS Asia and SCS are affiliates engaged in the provision of supply chain management, freight forwarding and logistics services.

5. UPS Asia and SCS entered into an RTSA effective January 1, 2012 where: (a) SCS will be the independent contractor[4] of UPS Asia which shall provide freight and

[1] Per UPS Asia's Memorandum and Articles of Association issued by the Registrar of Companies & Businesses of Singapore and Certificate Confirming Incorporation of Company issued by the Accounting and Corporate Regulatory Authority of Singapore.
[2] Per Certificate of Tax Residence issued by Chow Wai Yee, Assistant Commissioner of Corporate Tax Division for Comptroller of Income Tax, Inland Revenue Authority of Singapore dated May 5, 2021.
[3] Per Certification of Non-Registration of Company dated April 12, 2021 issued by Daniel P. Gabuyo, Assistant Director of Securities and Exchange Commission.
[4] Per Section 4 of RTSA.

logistic services such as customs clearance, sorting, delivery, warehousing and pick up services (collectively, the "**Local Services**") within the Philippines; and (b) UPS Asia will perform freight and logistics services, such as transport, procurement, customs clearance, sorting delivery, warehousing and pick up services outside the Philippines (collectively, the "**International Services**").

6. UPS Asia is responsible for its worldwide network and shall make all decisions regarding the pricing of any services to be provided to shippers and consignees (whether in or out of the Philippines) and all decisions regarding transportation outside the Philippines.[5]

7. UPS Asia shall not provide any services within the Philippines and has not sent employees to the Philippines to perform services under the RTSA.[6]

8. In consideration of SCS' performance of the Local Services, SCS shall receive compensation from UPS Asia equal to the compensable costs as determined in the RTSA plus an applicable markup percentage of three percent (3%) of the operating costs (collectively, the "**Compensation**").[7]

9. Pursuant to the RTSA, SCS shall remit to UPS Asia a transportation fee equal to the billed revenue by SCS from customers in the Philippines less the Compensation.

In reply, please be informed as follows:

I. Income Tax

Section 23 (F) of the Tax Code provides that a "foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines."

In the case of *CIR v. British Overseas Airways Corporation ("**BOAC Case**")*,[8] the Supreme Court held that in order that a foreign corporation may be considered as doing business within a state, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character. Otherwise, such foreign corporation is classified as a non-resident foreign corporation.

Under Section 28 (B) (1) of the Tax Code, as amended by Republic Act No. 11534,[9] only income received by a foreign corporation not engaged in trade or business in the Philippines from all sources within the Philippines shall be subject to income tax of twenty five percent (25%), to *wit*:

*"**Section 28. Rates of Income Tax on Foreign Corporations.** –*

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[5] Per Section 1.2.2 of RTSA.
[6] Per Sworn Certification issued by Evelyn Abreu, representative of SCS dated December 14, 2021.
[7] Per Schedule "A" of the RTSA.
[8] G.R. Nos. 65773-74, April 30, 1987.
[9] *An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 and 290 of the National Internal Revenue Code of 1997, as Amended, and Creating Therein New Title XIII, and for Other Purposes*, March 26, 2021.

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(B) Tax on Nonresident Foreign Corporation. –

(1) In General. – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines, effective January 1, 2021, shall pay a tax equal to twenty-five percent (25%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c)" (Underscoring supplied)

Conversely, income derived by non-resident foreign corporations from sources outside the Philippines is not subject to income tax. Section 42 (C) (3) of the Tax Code provides that compensation and/or payments received for services performed outside the Philippines are considered as income derived from sources outside the Philippines. Thus, non-resident foreign corporations deriving income for services performed abroad are not subject to Philippine income tax since such services are considered income from sources without the Philippines.[10]

This Office explained the above provisions in BIR Ruling No. OT-100-21[11] citing BIR Ruling No. 212-12 dated March 23, 2012:

"The situs of tax for services is the place where the service is rendered. Under the Philippine source of income rules for income tax purposes, service income will be considered Philippine source income only if the services are rendered in the Philippines. Conversely, if the services are rendered outside the Philippines, the service income will be considered as foreign source income.

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The rule in this jurisdiction regarding tax situs is: the source of an income is the property, activity or service that produced the income; the test of taxability is the source, and the source of an income is that activity which produced the income (CIR v. British Overseas Airways Corporation, G.R. Nos. 65773-74, April 30, 1987). Stated differently, the situs of the income derived from labor or personal services is determined solely by the place where service is rendered (CIR v. Japan Airlines, Inc., G.R. No. 60714, March 6, 1991). Compensation from services performed abroad is, therefore, considered income from sources without the Philippines and thus not subject to Philippine income tax." (Underscoring supplied)

The Supreme Court upheld the same position when it ruled in the case of *Marubeni v. CIR*[12] that revenues from services that were rendered outside the taxing jurisdiction of the Philippines are not subject to tax.

[10] BIR Ruling No. 203-2019, March 6, 2019; BIR Ruling No. 017-2018 dated January 17, 2018; BIR Ruling No. 124-2018 dated February 2, 2018; BIR Ruling DA-(C-022) 097-2010 dated June 16, 2010; BIR Ruling DA-514-2006 dated August 25, 2006; BIR Ruling No. [DA-293-00] dated 28 July 2000; *Commissioner v. British Overseas Airways Corporation*, G.R. Nos. 65773-74, April 30, 1987.

[11] BIR Ruling No. OT-100-2021, April 12, 2021.

[12] G.R. No. 137377, December 18, 2001.

Based on the above disquisitions, it is clear that the situs of the income derived from services is determined not by the residence of the payor or of the place of payment, but solely by the place where service is rendered.[13]

Moreover, please note that Section 2.57.1 (I) of Revenue Regulations ("**RR**") No. 2-98,[14] as amended, provides that only income derived by a non-resident foreign corporation from all sources within the Philippines are subject to final withholding tax, to *wit*:

> *"Sec. 2.57.1 **Income Payment Subject to Final Withholding Tax** – The following forms of income shall be subject to final withholding tax at the rates herein specified.*
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> *xxx xxx xxx*
>
> ***(I) Income Derived From all Sources Within the Philippines by Non-Resident Foreign Corporation** – The following shall be subject to final withholding tax based on the gross amount of income and at the rate prescribed therefor:*
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> *(1) In general – On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) – at the following rates xxx"* (Underscoring supplied)

In the instant case, relevant provisions of the RTSA read as follows:

> *"WHEREAS, SCS [UPS Asia] is willing to provide services required by customers within Asia and to assume the risk and responsibility for so doing;*
>
> *WHEREAS, to be able to provide the services required by customers within Asia, SCS [UPS Asia] requires Contractor [SCS] **to perform freight and logistic services, such as customs clearance, sorting, delivery, warehousing, and pickup services (the 'Local Services') within the Philippines (the 'Local Operating Area')** and Contractor [SCS] is willing to do so;*
>
> *xxx xxx xxx*
>
> *1. **Services.***
>
> *1.1. Scope of Services.*
>
> *1.1.1 Contractor [SCS] shall provide Local Services to customers within the Local Operating Area. If any services, functions, or responsibilities are required for the proper performance and provision of the Local Services, they shall be deemed to be included within the scope of the Local Services. **Further, Contractor [SCS] shall cooperate in good faith to agree upon and implement any additional services as may be requested by SCS [UPS Asia] from time to***

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[13] *CIR v. Japan Air Lines, Inc.*, G.R. No. 60714, October 4, 1991; BIR Ruling No. 009-2005 dated August 2, 2005.
[14] *Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as amended" relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes*, April 17, 1998; BIR Ruling [DA-272-06] dated April 21, 2006.

time. Contractor may subcontract or otherwise delegate its obligations under this Agreement without SCS's [UPS Asia] prior written consent.

1.1.2 ***SCS [UPS Asia] is responsible for its worldwide network and shall make all decisions regarding the pricing of any services to be provided to shippers and consignees (whether in or out of the Local Operating Area) and all decisions regarding transportation outside the Local Operating Area.***

1.1.3 ***SCS [UPS Asia] shall perform the International Services for customers, and shall not provide any direct services in the Local Operating Area.***

1.2 *Resources. Contractor [SCS] shall provide and maintain at all times sufficient and adequate facilities, vehicles, equipment, personnel, tools, and other materials as necessary to provide the Local Services hereunder (collectively, the 'Facilities'). Contractor [SCS] shall perform periodic maintenance, overhaul, and repair of, and if necessary expand or otherwise enhance, any and all Facilities owned or leased by Contractor [SCS] necessary to perform the Local Services.*

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3. Compensation.

3.1 *Payment of Services. Subject to the terms and conditions of this Agreement and Contractor's [SCS] performance of its obligations hereunder, Contractor [SCS] shall receive compensation for the Local Services Contractor [SCS] performs in accordance with the terms set forth in this Section and on the attached Schedule A dealing with Compensation. Contractor agrees to remit to SCS the amounts set forth in Schedule A.*

3.2 *Set-Off. The Parties may from time to time mutually agree to allocate to Contractor the expense of support services, including, without limitation, the* ***provision of equipment*** *(excluding items covered under the Technology License agreement)* ***provided by SCS [UPS Asia] to Contractor [SCS] in connection with the Local Services.*** *SCS [UPS Asia] shall have the right, upon such mutual agreement and written consent, to set-off the amount owed for such support services to SCS [UPS Asia] by Contractor [SCS] against any amounts owed by SCS [UPS Asia] to Contractor [SCS].*

3.3 *Settlement Process.* ***All amounts payable under this Agreement with respect to the local and international services shall be settled by intercompany invoice, memo, or other equivalent methodology on a periodic basis.*** *The Parties may offset payables and receivables against each other as mutually agreed to in writing by the Parties."*

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10. Term and Termination

10.1 *Term. This Agreement will commence on the Effective Date and, unless earlier terminated pursuant to the terms hereof, will continue for a period of one (1) year (the 'Initial Term'). At the expiration of the Initial Term, this Agreement will be automatically renewed for successive one (1) year periods (each, a 'Renewal Term'), unless earlier terminated pursuant to the terms hereof. The*

Initial Term and any Renewal Term are collectively referred to herein as the 'Term.'

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10.3 Effect of Termination. Upon the expiration or termination of this Agreement:

(a) within fifteen (15) days from the date of termination, Contractor [SCS] shall return all equipment and software to SCS [UPS Asia];

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SCHEDULE A

To The

REGIONAL TRANSPORTATION SERVICES AGREEMENT

Compensation

1. *For Local Services provided by Contractor [SCS] to customers pursuant to this Agreement, Contractor [SCS] shall retain an amount equal to the Compensable Costs, as defined below, incurred by Contractor [SCS] to perform the Local Services, plus the Applicable Markup Percentage, as defined below, of the Operating Costs.*

2. ***The Contractor [SCS] shall remit to SCS [UPS Asia] as a transportation an amount equal to the billed revenue by Contractor [SCS] to perform the Local Services plus the Applicable Markup Percentage of the Operating Costs."*** (Emphasis supplied)

A perusal of the RTSA shows that UPS Asia provides freight and logistic services, such as customs clearance, sorting, delivery, warehousing, and pickup service, to its customers in the Philippines through its contractor, SCS. In return, UPS Asia is paying SCS the Compensation. SCS, being the contractor, is remitting the collected transportation fee (the amount of which is fully controlled by UPS Asia[15]) from UPS Asia's customers in the Philippines to UPS Asia net of the Compensation.

Section 32 of the Tax Code defines "Gross income" as income derived from whatever source, including (but not limited to) the following items: (1) compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items; (2) gross income derived from the conduct of trade or business or the exercise of a profession; (3) gains derived from dealings in property; (4) interests; (5) rents; (6) royalties; (7) dividends; (8) annuities; (9) prizes and winnings; (10) pensions; and (11) partner's distributive share from the net income of the general professional partnership.

In the BOAC Case, the Supreme Court ruled that the source of an income is the property, activity, or service that produced the income. Likewise, the Court held:

"The absence of flight operations to and from the Philippines is not determinative of the source of income or the situs of income taxation. Admittedly, BOAC was an off-line international airline at the time pertinent to this case. The test of taxability is the 'source';

[15] Section 1.1.2 of the RTSA.

and the source of an income is that activity . . . which produced the income. Unquestionably, the passage documentations in these cases were sold in the Philippines and the revenue therefrom was derived from a business activity regularly pursued within the Philippines. And even if the BOAC tickets sold covered the 'transport of passengers and cargo to and from foreign cities', it cannot alter the fact that income from the sale of tickets was derived from the Philippines. The word "source" conveys one essential idea, that of origin, and the origin of the income herein is the Philippines." (Underscoring supplied)

Applying the above-mentioned provisions and jurisprudence in the instant case, while it is true that SCS performs the Local Services in the Philippines and UPS Asia performs the International Services, has no office in the Philippines and none of its personnel are performing services in the Philippines, it appears that income earned by UPS Asia (transportation fees) through the Local Services of SCS is derived from the services performed in the Philippines.

In addition, it bears stressing that the automatic renewal of the RTSA allows UPS Asia to engage in trade and business in the Philippines. Further, SCS performs acts or works or exercises functions that are incidental and beneficial to the purpose of UPS Asia's business and bring profits to UPS Asia.

Please note that the cases cited in the request refers to the income payments made by domestic corporations to non-resident corporations for services performed abroad or outside the Philippines. In the instant case, the fees remitted to UPS Asia refers to the transportation fees relating to the performance of Local Services performed in the Philippines.

In view of the foregoing, this Office is in the position that the income earned by UPS Asia from the Local Services is subject to Philippine income tax and consequently to withholding tax. Whereas, income earned by UPS Asia relating to the International Services which are performed abroad or outside the Philippines is not subject to Philippine income tax and consequently to withholding tax.[16]

II. Value-Added Tax

Section 108 (A) of the Tax Code provides that the VAT of twelve percent (12%) shall be imposed on the gross receipts derived by any person engaged in the sale or exchange of goods or services in the Philippines. Section 4.108-2 of RR No. 16-2005,[17] as amended, in relation to Section 108 (A) of the Tax Code provides that the phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration. Contrarywise, and as confirmed in numerous rulings of this Office, services performed outside the Philippines are not subject to value-added tax.[18] In the case of *Commissioner of Internal Revenue v. American Express International, Inc.*,[19] the Supreme Court held that, "for value-added tax purposes, the service is distinct from the product/output that arises from the performance of the service. What determines jurisdiction is the place where the service is rendered, not the place where the output of the service is ultimately used."

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[16] BIR Ruling No. 345-2011 dated September 22, 2011 citing *Commissioner of Internal Revenue v. Marubeni* Corporation, G.R. No.137377, December 18, 2001.
[17] *Consolidated Value-Added Tax Regulations of 2005* dated September 1, 2005.
[18] BIR Ruling [DA-272-06] dated April 21, 2006; BIR Ruling [DA-(C-011) 060-08] dated July 18, 2008; BIR Ruling [DA-(C-022) 097-10] dated June 16, 2010; BIR Ruling No. 345-2011 dated September 22, 2011.
[19] G.R. No. 152609, June 29, 2005.

the place where the service is rendered, not the place where the output of the service is ultimately used."

Applied in this case, all gross receipts derived by UPS Asia from its Local Services shall be subject to VAT and those derived by UPS Asia corresponding to the International Services that are performed outside the Philippines is not subject to VAT.

Take note that it is only the income derived from the services relating to the RTSA that is performed by UPS Asia outside the Philippines that is not subject to Philippine income tax, final withholding tax and VAT.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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