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

PD No. 1869, as amended.
BIR Ruling No. VAT-442-2022
VAT – 027 - 2024
MAY 13 2024

PHILIPPINE AMUSEMENT AND GAMING CORPORATION
CBP-1A, Metropolitan Park, Roxas Boulevard, Pasay
1300 Metro Manila, Philippines

Attention: **ALEJANDRO H. TENGCO**
Chairman and Chief Executive Officer

Gentlemen:

This refers to your letter, on behalf of the Philippine Amusement and Gaming Corporation ("**PAGCOR**"), requesting for a ruling that PAGCOR's purchase of slot machines from its non-resident foreign corporation not engaged in trade or business supplier (the "**Non-resident Supplier**") is exempt from taxes and/or subject to value-added tax ("**VAT**") at zero percent (0%) rate regardless of Section 7 of Republic Act ("**RA**") No. 11534, which states that a nonresident foreign corporation shall pay a tax equal to twenty five percent (25%) of the gross income received during each taxable year.

As represented, PAGCOR is to purchase slot machines pursuant to its authority to operate games of chance in the Philippines. Among the suppliers of PAGCOR is the Non-resident Supplier. Considering that the tax exemption granted to PAGCOR by virtue of Presidential Decree ("**PD**") No. 1869 extends to all juridical entities with a contractual relationship with PAGCOR without any qualification, it is the position of PAGCOR that the same extends to its non-resident foreign corporation not engaged in trade or business suppliers.

In reply, please be informed that Section 13 of PD No. 1869, as amended, reads:

"SECTION 13. Exemptions. –

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(2) Income and Other Taxes. – (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any ***contractual relationship*** *in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.*

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax." (Underscoring supplied)

Based on the above provision, a franchise tax of five (5%) percent shall be imposed on PAGCOR based on its gross revenue or earnings from gaming operations under its franchise in lieu of all kinds of taxes (whether direct or indirect), levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority. This tax incentive also extends to: (1) corporations, associations, agencies, or individuals with whom PAGCOR or operator has any **contractual relationship** in connection with the operations of authorized casino(s); and (2) to those receiving compensation or other remuneration from PAGCOR or operator as a result of essential facilities furnished and/or technical services rendered to the PAGCOR or operator.

The above tax exemption includes VAT pursuant to Section 109 (1) (K) of the National Internal Revenue Code of 1997, as amended ("**Tax Code**") which states that:

"SEC. 109. Exempt Transactions. — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

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(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529." (underlining supplied)

Please note that in granting the above tax incentives, Section 13 of PD No. 1869, as amended, does not distinguish the residency of PAGCOR's contractees. It is a well-settled rule that where the law does not distinguish, neither should we distinguish.[1] Also, a cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[2] As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure". Therefore, it may be concluded that it applies to both domestic and foreign corporation, whether resident or non-resident.

[1] BIR Ruling No. OT-013-2022, January 14, 2022.
[2] *Cynthia S. Bolos v. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.

In line with the above legal principle, the BIR, in several rulings, did not qualify the residency of the contractees of PAGCOR.[3] In BIR Ruling No. 382-2019,[4] the BIR stated that "[S]ince PGI is a registered supplier and contractor of PAGCOR for the Gaming Products and Services, as above-mentioned, and thus, having a **contractual relationship** with the latter, the exemption from taxes, fees and charges enjoyed by PAGCOR is extended to PGI pursuant to Section 13 (2) (b) of PD 1869, as amended." In issuing the said ruling, the major consideration made by the BIR is whether the entity is a contractor of PAGCOR for the latter's gaming operations, which is, to emphasize, the only qualification mandated under Section 13(b) of PD No. 1869, as amended.

In the recent *en banc* decision of the Supreme Court in the consolidated cases of *Saint Wealth Ltd., v. Bureau of Internal Revenue* and *Marco Polo Enterprises Limited v. Secretary of Finance,*[5] citing also the case of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*,[6] the Supreme Court unequivocally affirmed the applicability of the tax exemption provisions of PD No. 1869, as amended, to PAGCOR's contractees and licensees without any qualification, to *wit*:

> *"Considering the above-cited provisions, this Court clarified in Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue (Bloomberry), that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, inures to the benefit of PAGCOR's licensees:*
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> *'As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.*
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> *xxx xxx xxx*
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> *Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.'"* (Underscoring supplied)

The rationale for the applicability of the tax exemption provisions of PD No. 1869 to PAGCOR's contractees and licensees was explained in the case of *CIR v. Acesite (Philippines) Hotel Corp.*[7], *viz*:

> "Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or

[3] BIR Ruling No. 382-2019 dated July 12, 2019; BIR Ruling No. VAT-442-2022 dated December 27, 2022.
[4] July 12, 2019.
[5] G.R. Nos. 252965 and 254102, December 7, 2021.
[6] G.R. No. 212530, August 10, 2016.
[7] 545 Phil. 1 (2007)

passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. *Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes."*

In light of the recent rulings and jurisprudence, it is clear that income received by: (1) PAGCOR; and (2) PAGCOR's contractees and licensees (whether domestic or resident/nonresident foreign corporation), from their respective gaming operations, is subject to five percent (5%) franchise tax, in lieu of all other national and local taxes, including indirect taxes such as VAT.

In the instant case, a perusal of the documents submitted shows that the slot machines that will be sold by the Non-resident Supplier to PAGCOR will be used by the latter in its gaming operations. Hence, income derived by said Non-resident Supplier from the sale is considered as income by a contractee of PAGCOR derived from gaming operations, which falls squarely under Section 13(b) of PD No. 1869, as amended.

Such being the case, this Office hereby rules that the income derived by Non-resident Supplier (being a contractee of PAGCOR) from the sale of slot machines to PAGCOR is subject to five percent (5%) franchise tax, in lieu of all other national and local taxes, including the twenty-five percent (25%) income tax based on Section 7 of RA No. 11534 and indirect taxes such as VAT.

Relative thereto, the gross income derived from all sources within the Philippines by a non-resident foreign corporation is subject to final withholding tax pursuant to Section 2.57.1(F) of Revenue Regulations No. 2-98, as amended. Thus, in this particular situation, PAGCOR shall subject the payments to its non-resident foreign corporation suppliers to the final withholding tax at the rate of five percent (5%) representing the franchise tax, in lieu of all other national and local taxes.

However, it should be noted that income derived by the Non-resident Supplier from other related services/operations or from non-gaming operations in the Philippines, if any, shall be subject to the regular internal revenue taxes, including, but not limited to, corporate income 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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