REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Republic Act No. 7916; Revenue Regulations No. 1-2000; Revenue Regulations No. 11-2005
BIR Ruling No. 115-13
CT- 041-2022
JAN 24 2022

INGO MANUFACTURING PHILIPPINES, INC.
CEZIA Road, Block 14-A, Phase 3,
Cavite Economic Zone, Rosario,
Cavite 4106

Attention: **M. Harrieth B. Untalan**
General Manager

Gentleman:

This refers to your letter dated September 15, 2020 requesting for a clarification on whether or not the sale of a factory building located at Block 18, Lot 13, Road E, Phase 4, Cavite Economic Zone (CEZ), Rosario, Cavite between CQS Stainless Corporation and Ingo Manufacturing Philippines, Inc. is subject to capital gains tax (CGT), documentary stamp tax (DST) and withholding tax.

It is represented that CQS Stainless Corp. is a Philippine Economic Zone Authority (PEZA) registered entity with Certificate of Registration No. CQS Stainless Corp. is registered as an Ecozone Export Enterprise engaged in the manufacture of stainless steel pipes, fittings and flanges for export, and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at CEZ.

It is further represented that CQS Stainless Corp. decided to sell one of its factory buildings located at Block 18, Lot 13, Road E, Phase 4, CEZ, Rosario, Cavite to Ingo Manufacturing Philippines, Inc., another PEZA registered entity with Certificate of Registration No. . Ingo Manufacturing Philippines, Inc. is registered as an Ecozone Export Enterprise engaged in the manufacture of high technology dispensing systems/units for soap, food products and chemical concentrates for export and the importation of raw materials, machinery, equipment, tools, goods, wares, articles or merchandise directly used in its registered operations at the Laguna Technopark-Special Economic Zone (LT-SEZ). PEZA issued a Letter of Authority granting permission to CQS Stainless Corp. to sell the aforementioned factory building to Ingo Manufacturing Philippines, Inc. subject to specified terms and conditions. Thus, on August 3, 2020, the above parties entered into a Sales Contract whereby CQS Stainless Corp. sold the factory building to Ingo Manufacturing Philippines, Inc. Hence, this request.

In reply, please be informed that Section 24 of Republic Act (RA) No. 7916, as amended, provides in part:

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"SEC. 24. Exemption from National and Local Taxes. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ecozone. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ecozone shall be paid and remitted as follows: (a) three percent (3%) to the national government; and (2) two percent (2%) to the municipality or city where the enterprise is located."

In relation thereto, Section 4, Revenue Regulations (RR) No. 1-2000, implementing Section 24 of RA No. 7916, also provides that:

> "Section 4. Nature of the 5% Tax and Extent of Exemptions. — The above 5% tax is imposed on "gross income", hence, income tax in nature and a national internal revenue law in character. Registered ECOZONE enterprises shall be exempt from all other taxes, national or local, except the real property tax on land owned by developers, pursuant to Section 24 of R.A. No. 7916, as amended by R.A. No. 8748."

The term "gross income" on which the 5% tax is imposed is defined in Section 3 of RR No. 11-05, to wit:

> "Section 3. Gross Income Earned. — For purposes of implementing the tax incentive of registered Special Economic Zone (ECOZONE) enterprises in Section 24 of Republic Act No. 7916, the term "gross income earned" shall refer to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus costs of sales or direct costs but before any deduction is made for administrative, marketing, selling and/or operating expenses or incidental losses during a given taxable period."

As a general rule, PEZA-registered enterprises are imposed a preferential tax rate of five percent (5%) based on gross income in lieu of all taxes except real property tax. It must be emphasized, however, that such tax incentives granted to PEZA-registered enterprises shall apply only in respect of the enterprise's registered activity within the Ecozone. Thus, the five percent (5%) gross income tax could only be availed of by the PEZA-registered entities in relation to its registered activity. Relative thereto, noteworthy is Article II of the Registration Agreement dated November 14, 2005 executed by and between PEZA and CQS Stainless Corp., which laid down the scope of CQS Stainless Corp.'s registered activity as follows:

> "2. The scope of the REGISTRANT's registered activity shall be limited to the manufacture of stainless steel pipes, fittings and flanges for export, and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at CEZ. In the event the REGISTRANT decides to engage in a new or additional activity, directly or indirectly related to its registered activity, it shall apply anew with PEZA for the latter's approval." (underscoring supplied)

It is clear from the foregoing that CQS Stainless Corp.'s registered activity shall be limited to the manufacture of stainless steel pipes, fittings and flanges for export, and the

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importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations. Nothing in the said Registration Agreement allows CQS Stainless Corp. to engage in the sale of any of its factories as part of its registered activity.

Such being the case, the sale of CQS Stainless Corp. of its factory in favor of Ingo Manufacturing Philippines, Inc. shall be subject to regular income tax, and consequently, to the creditable withholding tax pursuant to RR No. 2-98, as amended. Furthermore, considering that the aforesaid factory was used in business, the sale of the same is considered as a sale of ordinary asset and is subject to value-added tax (VAT) pursuant to Section 106 of the National Internal Revenue Code (Tax Code) of 1997, as amended. Finally, the Sales Contract executed by and between the parties for the sale of the said factory shall be subject to the DST in accordance with Section 196 of the Tax Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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