REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Sections 28 (B) (1), 42 (C) (3), and 108, of the National Internal Revenue Code (NIRC) of 1997, as amended;
BIR Ruling Nos. 173-21, 297-11
OT- 049-2024
OCT 07 2024

ANTI-MONEY LAUNDERING COUNCIL
Room 507, 5/F, EDPC Building, Bangko Sentral ng Pilipinas Complex,
Malate, Manila

Attention: **MATTHEW M. DAVID**
Executive Director

Gentlemen :

This refers to your request for a ruling confirming that payments to ***Ms. Josée Nadeau*** (Consultant), a non-resident, foreign service provider, for services rendered outside the Philippines are not subject to Philippine income tax, and consequently, to the withholding tax and value-added tax (VAT) under the Renewal Contract, Consultancy Services Agreement, and other subsequent renewals and agreements, the purpose of which is the removal of the Philippines from the "Financial Action Task Force (FATF) Greylist" as well as from the European Union's List of Jurisdictions with Strategic AML/CFT Deficiencies (EU List on AML/CFT).

Background

1. The Consultant is a Canadian resident, with office address at

2. The Anti-Money Laundering Council (AMLC) entered into a Consultancy Services Agreement with the Consultant which is valid for a period of nine (9) months, starting June 10, 2020 to February 28, 2021, renewable at the option of the AMLC.

3. The Bureau of Internal Revenue (BIR) issued BIR Ruling No. VAT-173-21 which confirmed that the income payments made to the Consultant by AMLC for services rendered abroad or outside the Philippines are not subject to Philippine income tax, withholding tax, and VAT.

4. On February 26, 2021, a *Renewal Contract* was executed wherein the Consultant and AMLC agreed to renew the *Consultancy Services Agreement* under the same terms and conditions which will cover a period of four (4) months commencing ***from March 1, 2021 until June 30, 2021***. The said contract was renewable at the option of the AMLC subject to the execution of another Agreement.

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5. On June 25, 2021, the Philippines was included in the FATF's List of Jurisdictions Under Increased Monitoring ***("Grey List")*** which meant that the country needs to implement a list of action plan items and submit periodic progress reports to the Asia Pacific-Joint Group in January, May, and September of every year until the Philippines exits the *Grey List.*

6. The inclusion of the Philippines in the *Grey List* led to the execution of another *Consultancy Services Agreement* for availing the services of the Consultant for another period from September 1, 2021 to February 28, 2022.

7. The services of the Consultant may be renewed continuously for period of six (6) months until the Philippines exits the International Cooperation Review Group Active Review Process, at the option of the AMLC, subject to the execution of another Agreement. All services under the subsequent Agreement shall be under the same terms and conditions of the Consultancy Service Agreement executed on September 1, 2021.

8. All services under the *Renewal Contract* and the *Consultancy Services Agreement* executed on February 26, 2021 and September 1, 2021 respectively were rendered outside the Philippines, including desk-based reviews, email correspondences, video conferences, and virtual/online delivery workshops.

Hence, this request.

In reply, please be informed that Sections 23 (D) and 25 (B) of the National Internal Revenue Code of 1997, as amended (Tax Code) provide:

> *"**SEC. 23. General Principles of Income Taxation in the Philippines.** — Except when otherwise provided in this Code:*
>
> *xxx xxx xxx*
>
> *(D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines;"*
>
> *"**SEC. 25. Tax on Nonresident Alien Individual.** —*
>
> *xxx xxx xxx*
>
> *(B) Nonresident Alien Individual Not Engaged in Trade or Business within the Philippines. — There shall be levied, collected and paid for each taxable year upon the entire income received from all sources within the Philippines by every nonresident alien individual not engaged in trade or business within the Philippines as . . . salaries, wages, . . .compensation, remuneration, . . . a tax equal to twenty-five percent (25%) of such income ..."*

In relation to the previously cited provisions, Section 42 (A) (3) and (C) (3) of the Tax Code states that compensation for labor or personal services is derived from sources within the Philippines if the services are performed therein, and outside if the services are performed outside the Philippines, to wit:

> *"SEC. 42. Income from Sources within the Philippines. —*

(A) Gross Income from Sources within the Philippines. — The following items of gross income shall be treated as gross income from sources within the Philippines:

xxx xxx xxx

(3) Services. — Compensation for labor or personal services performed in the Philippines;

xxx xxx xxx

(C) Gross Income from Sources without the Philippines. — The following items of gross income shall be treated as income from sources without the Philippines:

xxx xxx xxx

(3) Compensation for labor or personal services performed without the Philippines;"

In accordance with the aforementioned provisions, non-resident alien individuals are subject to income tax only on income derived from all sources within the Philippines. Conversely, they are not subject to income tax on income derived from sources outside the Philippines.

The Bureau reiterates the following points contained in BIR Ruling No. 212-12:[1]

"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. x x x

"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.*** *"* (Emphasis supplied.)

Applying the foregoing provisions, Ms. Nadeau is a non-resident alien individual not doing business in the Philippines and her professional fees or compensation constitute income derived from sources outside the Philippines, it can be said that the same are not subject to income tax, and consequently, to the withholding tax.

On the other hand, Section 108 (A) of the Tax Code clearly reads that the sale or exchange of services subject to VAT include only those services that are performed in the Philippines, *viz*:

[1] Dated March 23, 2012

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"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration of consideration..."

Accordingly, the service fees to be paid by the **AMLC** to **Ms. Josée Nadeau,** to the extent that the subject services are not performed in the Philippines, are exempt from VAT. Conversely, if the subject services are performed in the Philippines, these shall be subject to VAT.

IN VIEW OF THE FOREGOING, this Office hereby CONFIRMS your opinion that the income payments made for services rendered by **Ms. Josée Nadeau** to the **AMLC** under the *Renewal Contract* dated February 26, 2021 and the *Consultancy Services Agreement* dated September 1, 2021, including other subsequent renewals and agreements containing the same terms and conditions, the purpose of which is the removal of the Philippines from the "FATF Greylist" as well as from the European Union's List of Jurisdictions with Strategic AML/CFT Deficiencies (EU List on AML/CFT), are NOT subject to Philippine income tax, withholding tax, and VAT ***to the extent that the subject services are not performed in the Philippines***. Conversely, if the subject services are performed in the Philippines, such in the case of any in-country missions or in-country trainings, these shall be subject to Philippine income tax, withholding tax, and VAT.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will 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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