Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
National Office
Quezon City

Bringing In Revenues for Nation-building

Sections 23 (F), 28 (B) (1), 42 (A) (3), (A) (4), (C) (3), and 108 (A) of the National Internal Revenue Code of 1997, as amended;
OT- 061-2025
APR 15 2025

SyCip Gorres Velayo & Co.
6760 Ayala Avenue
1226 Makati City

Attention: **ATTY. CAROLINA A. RACELIS**
Principal, Tax Services

Gentlemen:

This refers to your request for a ruling confirming that the service fees paid by ***Tsukiden Global Solutions, Inc. ("TGSI")*** to ***Tsukiden Software Co. Ltd. ("TSCL")*** are not subject to income tax, withholding tax, and value-added tax ("VAT").

It is represented that TGSI with Taxpayer Identification Number [redacted] 0, is a corporation organized and existing under the laws of the Republic of the Philippines with office address at 21st Floor, One Corporate Center, Julia Vargas cor. Meralco Avenue, Ortigas Center, Pasig City. TGSI is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Information Technology enterprise where is was granted a four-year income tax holiday incentive beginning December 2010. Moreover, pursuant to its Registration Agreement with PEZA, the scope of TGSI's registered activity shall be limited to the engagement in quality assurance and testing of software and the importation of machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its operations.

On the other hand, TSCL is a non-resident foreign corporation organized and existing under the laws of Japan, with its principal office located at 68 Okidaka, Taiheji, Fukushima, City, Fukushima Prefecture 960-8151, Japan. TSCL is not engaged in any trade or business in the Philippines and is not registered as a corporation or partnership in the Philippines pursuant to the Certificate of Non-Registration issued by the Securities and Exchange Commission.

On December 1, 2010, Denso Techno Philippines Inc. (DTPH), a domestic corporation registered with PEZA, engaged the services of TGSI through a *"Master Service Contracting Agreement"* for the design and manufacture of software and equipment and associated services.

Thereafter, TGSI entered into a "*Service Agreement*" with TSCL to subcontract portions of the work under the said "*Master Service Contracting Agreement*" with DTPH which will be performed in Japan. Under Article 1 of the "*Service Agreement*", TSCL's obligation includes the

conduct of data preparation, systems evaluation, project management, final checking of the systems after evaluation, and compliance with the terms and conditions of the agreement. On the other hand, Article 5 of the same agreement states that TSCL undertakes to provide TGSI with evaluation and project management of systems which shall be performed by TSCL in its principal office in Japan.

In this regard, you request confirmation of your opinion that the that the services fees paid by TGSI to TSCL are not subject to income tax, withholding tax, and VAT.

In reply, please be informed as follows:

Sections 23 (F) and 28 (B) (1) 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*
>
> *(F)* 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***.
>
> *xxx xxx xxx"*
>
> ***SEC. 28. Rates of Income Tax on Foreign Corporations.*** —
>
> *xxx xxx xxx*
>
> *(B)* Tax on Non-resident Foreign Corporation. –
>
> (1) In General. – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year ***from all sources within the Philippines*** xxx...xxx. Provided, that effective January 1, 2009, ***the rate of income tax shall be thirty percent (30%).***[1]" (Emphasis supplied)

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*

[1] This was reduced to twenty-five percent (25%) by Republic Act No. 11534 starting January 1, 2021.

(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;" (Emphasis supplied)

In accordance with the aforementioned provisions, non-resident foreign corporations 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 services claimed to be exempted must be of the nature that can be reasonably performed abroad.

The submitted "*Service Agreement*" shows that the obligations of TSCL includes the conduct of data preparation, systems evaluation, project management, final checking of the systems after evaluation, and compliance with the terms and conditions of the agreement, while the services that TSCL undertakes to provide TGSI pertain to evaluation and project management of systems.

Please take note that the rule in this jurisdiction regarding tax situs is that the source of income is the property, activity or service that produced the income, the test of taxability is the "source" and the source of income is that activity which produced the income.[2]

In general, the situs of tax for services is the place where the service is rendered. Accordingly, service income will be considered income within the Philippines 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 sourced income or without the Philippines, *viz.*:

> "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.***[3]" (Emphasis supplied)

Related thereto, Section 42 (A) (4) (f) of the Tax Code considers as income from sources within the Philippines, those received for the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme.

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[2] CIR vs. British Overseas Airways Corporation, G.R. Nos. L-65773-74, April 30, 1987.
[3] BIR Ruling No. 212-2012 dated March 23, 2012.

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With respect to VAT, ***Section 108 (A) (6)*** of the Tax Code provides that payments for the sale or exchange of services, including the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme, are subject to the twelve percent (12%) VAT.

In this case, we consider TSCL's provision of data preparation, systems evaluation, project management, and final checking of the systems after evaluation, based on its expertise and line of business, as supply of technical services falling under Sections 42 (A) (4) (f) and 108 (A) (6) of the Tax Code. Payment for such services is on a per man-month basis rendered for the project, depending in the level of expertise of the manpower assigned to the project.

As the aforesaid provisions of the Tax Code speak of *supply*, the situs or source of taxation is not the place where the services are performed but rather the place or residence of the *user or consumer* of such services. As the ultimate user or beneficiary of such services is DTPH, a domestic corporation, then it follows that, the situs or source of taxation of the payment for such service is in the Philippines.

IN VIEW OF THE FOREGOING, this Office hereby states that the subject services under the "*Service Agreement*" between TGSI and TSCL are 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,

BIR025786

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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