March 18, 2021

BIR RULING NO. VAT-075-21

Section 108 (B) (2); RMO No. 7-2006; RMC Nos. 54-2014 & 17-2018; BIR Ruling No. 1065-18; BIR Ruling No. 134-18; BIR Ruling No. 413-12; BIR Ruling No. 455-11;

Chato & Vinzons-Chato
8th Floor, Strata 2000
F. Ortigas, Jr. Road, Ortigas Center
1605 Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 10, 2020 requesting on behalf of your client, D.W. Morgan Philippines ("DW Morgan Ph" for brevity) for confirmation of your opinion that your client's transactions with DW Morgan HK Limited ("DW Morgan HK") are subject to value-added tax (VAT) at the rate of zero percent (0%) pursuant to Section 108 (B) (2) of the National Internal Revenue Code of 1997 (NIRC), as amended by Republic Act (RA) No. 10963 or the TRAIN Law.

It is represented that DW Morgan Ph is a VAT-registered corporation organized and existing under the laws of the Philippines as a regional operating headquarters for DW Morgan HK. DW Morgan HK is a foreign company organized and existing under the laws of Hong Kong and engaged in ground and air services and in international trade having affiliates, subsidiaries and branch offices in the Asia Pacific Region and other foreign markets.

On December 19, 2019, DW Morgan Ph entered into a Service Contract with DW Morgan HK. Based on Service Contract, DW Morgan Ph shall service only its own affiliates, subsidiaries and other branch offices abroad, for the following services:

- Bookkeeping/Accounting services;

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- Administrative Support;
- Operations Service Support;
- Information Technology Services (*i.e.*, maintenance, monitoring and troubleshooting of D.W. Morgan systems);
- Technology initiatives (*i.e.*, process improvements through development of cross-platform application for desktop and mobile technologies);
- General administrative and planning;
- Business planning and coordination;
- Sourcing/procurement of raw materials and components;
- Corporate finance advisory services;
- Marketing control and sales promotion;
- Training and personnel management;
- Logistic services;
- Research and development services and product development;
- Technical support and maintenance;
- Data processing and communication; and
- Business development

DW Morgan Ph provides the above-mentioned administrative and support services to the following affiliates:

Name of Affiliate	Type of Business	Country
DW Morgan Company, Inc.	Transportation services	United States
DW Morgan Manufacturing, Inc.	Transportation services	United States
DW Morgan HK Limited	Transportation services	Hong Kong

Pursuant to the Service Contract, the aforementioned enumerated services are those that shall be billable by the Affiliate.

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DW Morgan Ph is being paid by DW Morgan HK in U.S. Dollars for the aforementioned services.

In support of your request, you submitted the following documents:

1. Service Agreement between DW Morgan Ph and DW Morgan HK reflecting the nature of services to be rendered by DW Morgan Ph as the domestic corporation;

2. Fund Transfer Credit Advice and Certificate of Inward Remittances issued by the pertinent bank which facilitated the payment;

3. VAT Official Receipts in compliance with the invoicing and accounting requirements for VAT registered persons;

4. Certification of Non-Registration of Company issued by the Securities and Exchange Commission (SEC) to DW Morgan HK; and

5. Consularized Certificate of Registration/Incorporation of DW Morgan HK, authenticated by the Philippine Embassy.

In reply, please be informed that Section 4.108-5 (b) (2) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007, states that:

> "(b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (2) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;"

In relation thereto, Item No. II (7) of the Guidelines and Policies provided in Revenue Memorandum Order (RMO) No. 7-2006 dated December 15, 2005, states that:

> "7. Approval for VAT zero-rating shall be required only for transactions which fall under the provisions of Sections 106(A)(2)(a)(3)(5) and (6); 106(A)(2)(c); and 108(B)(3), (4) and (5) of the National Internal Revenue Code (NIRC) of 1997, as last amended by Republic Act No. 9337. Accordingly, transactions falling under the provisions of Sections 106 (A)(2)(a)(1), (2), and (4); 106(A)(2)(b); and 108(B)(1), (2),

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(6) and (7) of the NIRC which are automatically considered as zero-rated shall not be covered by this Order." (Underscoring supplied)

In BIR Ruling No. 455-2011 dated November 16, 2011, this Office stated that in order to qualify for VAT zero rating under the above stated provision, the following requisites must concur:

1. The services must be rendered to persons engaged in business outside the Philippines or to a non-resident foreign clients not engaged in business who are outside the Philippines when the services are performed; and

2. The fees must be paid to the domestic corporation in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Accordingly, since the services are rendered by DW Morgan PH to DW Morgan HK, a non-resident company as evidenced by the Certificate of Non-Registration of Company issued by SEC dated December 17, 2019, and paid for in acceptable foreign currency, as evidenced by the Certificates of Inward Remittances issued by pertinent banks, such as Standard Chartered Bank and Eastwest Bank, the service fees paid therefor by DW Morgan HK are automatically subject to zero percent (0%) VAT pursuant to the above-cited laws, orders and regulations, even without the necessity of applying for and securing prior approval for VAT zero-rating, as explicitly stated in RMO No. 7-2006. *(BIR Ruling No. VAT-128-20 dated February 4, 2020)* It must be emphasized, however, that the 0% VAT rate on the sale of services of DW Morgan Ph does not cover all its transactions as it must still show that said transactions fully comply with the above-mentioned requirements. *(BIR Ruling Nos. 1065-2018 dated July 12, 2018; and 413-2012 dated July 15, 2012)* Moreover, DW Morgan Ph must comply with the invoicing requirements set forth in Section 113 of the NIRC.

Furthermore, considering that the services rendered by DW Morgan Ph to DW Morgan HK qualify for VAT zero-rating, DW Morgan Ph is likewise entitled to apply for the refund of any excess or unutilized input VAT due or paid attributable to its zero-rated sale of services to DW Morgan HK, subject to the conditions provided in Section 112 (A) of the Tax Code of 1997, as amended, and being implemented by Section 19 of RR No. 4-2007, as amended, and supplemented by Revenue Memorandum Circular (RMC) Nos. 54-2014 and 17-2018. This Ruling shall not be construed as granting/approving the claim for refund as it is a separate process, the requirements of which must still be complied by DW Morgan Ph. *(BIR Ruling No. 134-2018 dated February 2, 2018 and VAT Ruling No. 018-2005 dated September 13, 2005)*

This ruling is being issued on the basis of the foregoing facts as represented.

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However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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