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

RA 7227; RA 9400; RR 2-05
BIR Ruling No. 222-19 BIR Ruling No. 023-00
CTA 10078-2022
FEB 23 2022

THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC.
Unit 1503, 15th Floor, The Taipan Place, F. Ortigas Jr. Road
Ortigas Center, 1605 Pasig City

Attention: **Attys. Janice C. Esparrago-Margate**
Head of Legal and Corporate Affairs
Conrado M. Najera
Senior Corporate Counsel
and
Ma. Shiela H. Garcia
Associate Corporate Counsel

Gentlemen:

This refers to your letter dated June 25, 2019 requesting for a ruling that Thunderbird Pilipinas Hotels and Resorts, Inc. ("Thunderbird", for brevity) is subject only to the preferential tax rate of five percent (5%) on its gross income, in lieu of all other taxes, including franchise tax, since it is registered with the Poro Point Freeport Zone (PPFZ) - Poro Point Management Corporation Freeport Zone in accordance with Republic Act (RA) No. 7227, known as the Bases Conversion and Development Act of 1992, as amended by R.A. No. 9400.

It is represented that Thunderbird is a corporation organized and existing under the laws of the Philippines, with principal office at VOA Pennsylvania Avenue, Poro Point, San Fernando City, La Union. It is registered with the BIR with Tax Identification No. (TIN) It is likewise registered with the Securities and Exchange Commission (SEC) with Company Registration No. dated September 15, 2005. It is stated in its Amended Articles of Incorporation that the primary purpose of Thunderbird is: *"To deal in and engage in the business of conducting, and operating hotels, clubs, restaurants, gaming, recreation, leisure and all other businesses appurtenant and/or related thereto"*.

Thunderbird is registered with Poro Point Management Corporation (PPMC) as a Poro Point Special Economic and Freeport Zone (PPSEFZ) enterprise pursuant R.A. No. 7227 or the Bases Conversion and Development Act of 1992, as amended by R.A. No. 9400, with Certificate of Registration No. PPFZ Certificate No. . Article I of its Certificate of Registration provides that:

> "The Company shall be classified as a PPFZ Registered Enterprise, which term is defined under Section 3, paragraph nn. of the Implementing Rules for the following purpose: "to deal in and engage in the business of conducting and operating hotels, clubs, restaurants,

FEB 2 3 2022

gaming, recreation, leisure and all other business appurtenant and/or related thereto; to engage in business of developing and improving real estate properties; and to own, lease, construct, manage, control, operate and maintain such buildings, works, stores, warehouses and other structures in such property or real estate necessary therefore as may be useful and related to said business in the PPFZ, San Fernando City, La Union."

As a PPFZ-registered enterprise, Thunderbird has entered into an agreement with the BCDA and PPMC to lease and develop the 65.5 hectares Tourism Complex located within the PPSEFZ managed by the Bases Conversion and Development Authority (BCDA) and PPMC whereby Thunderbird was to lease and develop the 65.5 hectares Tourism Complex with the lease payment to be remitted to BCDA/PPMC based on minimum guaranteed lease payment plus a percentage of the gross gaming revenues. Thunderbird is duly licensed, as well, by Philippine Amusement and Gaming Corporation (PAGCOR) to operate a casino complex business within PPSEFZ pursuant to Presidential Decree (PD) No. 1869.

In reply, please be informed that Section 3 of R.A. No. 9400, amending R.A. No. 7227 or the Bases Conversion and Development Act of 1992, provides:

> "SECTION 3. A new Section 15-A is hereby inserted, amending Republic Act No. 7227, as amended, to read as follows:
>
> "SEC. 15-A. Poro Point Freeport Zone (PPFZ) — The two hundred thirty-six and a half-hectare (236.5 has) secured area in the Poro Point Special Economic and Freeport Zone created under Proclamation No. 216, series of 1993, shall be operated and managed as a freeport and separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the PPFZ. The PPFZ shall also provide incentives such as tax and duty-free importation of raw materials and capital equipment. However, exportation or removal of goods from the territory of the PPFZ to the other parts of the Philippine territory shall be subjected to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax law of the Philippines.
>
> The provisions of existing laws, rules and regulations to the contrary notwithstanding, **no national and local taxes shall be imposed on registered business enterprises within the PPFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the PPFZ** and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located. (Emphasis supplied)
>
> xxx xxx xxx"

In relation thereto, Section 5 of Proclamation No. 216, series of 1993, provides that:

> "Section 5. Investment Climate in the Poro Point Special and Economic and Freeport Zone. – Pursuant to Section 5 (m) and Section 15 of R.A. 7227, BCDA shall promulgate all necessary policies, rules

CT-078-2022
FEB 23 2022

and regulations governing Poro Point including investment incentives, in consultation with the local government units and pertinent government departments for implementation by BCDA. Among others, Poro Point shall have all the applicable incentives in the Subic Special Economic and Freeport Zone under R.A. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991 and new investment laws which may hereinafter be enacted." (Underscoring ours)

From the afore-quoted provisions of R.A. No. 9400, in relation to Proclamation No. 216, series of 1993, all the applicable incentives in the Subic Special Economic and Freeport Zone and those applicable incentives granted in the Export Processing Zones and in other export processing zones were likewise granted to Poro Point Special Economic and Freeport Zone. *(BIR Ruling Nos. 023-2000 dated May 18, 2000 and 222-19 dated April 3, 2019)*

Thus, as a PPFZ-registered enterprise, Thunderbird, is subject to the payment of preferential tax rate of 5%, *in lieu of* paying local and national taxes, based on its *gross income earned* within the zone and which shall be remitted in accordance with RA No. 7227, as amended.

In the case of *Davao Light and Power Company, Inc. v. CIR, CTA Case No. 5413 dated August 7, 1998,* the Court of Tax Appeals has adopted the definition of the phrase "in lieu of any and all taxes" as follows:

"The phrase 'in lieu of' means instead of in a place of; or in substitution for (*Black v. Barnes, 46 P. 2d 625, 626, 142 Kan. 361; Rutherland v. Oroville-Wyandotte Irr. Dist., 22 P. 2d 505, 218 Cal. 242; Words and Phrases, Vol. 21, p. 427*). It does not mean "in addition to" (*Glassman Const. Co. v. Baltimore Brick Co., 246 Md. 478, 228 A. 2d 472, 474, Black's Law Dictionary, 6th ed., 1990, p. 787*). The "in lieu of" implies the existence of something for which a substitution is being made. Thus, the "in lieu of all other taxes" means that none other than the tax specified however described can be demanded. It limits the liability to the specific tax. (*State of Tennessee v. Bank of Commerce, 53 p. 735, 736, Words and Phrases, Vol. 21, p. 474*)"

On the other hand, Section 7 of Revenue Regulations (RR) No. 2-2005 dated February 8, 2005, the phrase "gross income earned" was defined, as follows:

"SECTION 7. Gross income earned. — For purposes of the application of these Regulations "gross income earned" shall refer to gross sales or gross revenue derived from registered business activity within the Zone net of sales discounts, sales returns and allowances minus cost of sales or direct costs but before any deductions for administrative, marketing, selling, operating expenses or incidental losses during a given taxable. For financial enterprises, gross income shall include interest income, gains from sales, and other income." (Underscoring ours)

In view of the foregoing, since Thunderbird is a PPFZ-registered enterprise engaged in conducting and operating hotels, clubs, restaurants, gaming, recreation, leisure

OT-078-2022
FEB 23 2022

and all other business appurtenant and/or related thereto, it is exempt from payment of national and local taxes, including the franchise tax, and in lieu of which, it is subject to the 5% tax based on the gross income earned from all its registered business activities within the Poro Point Freeport Zone.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

049788

K-1
gps(thunderbird)