REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Republic Act No. 9513; Revenue Regulations No. 7-2022
BIR Ruling No. 649-2018; BIR Ruling No. VAT-351-2022
OT-080-2023
AUG 01 2023

BAC-MAN GEOTHERMAL INC.
6th Floor, Rockwell Business Center, Tower 3
Ortigas Avenue, Pasig City

Attention: **CIRILA V. ROMBLON**
Authorized Representative

Gentlemen:

This refers to your request on behalf of BAC-MAN Geothermal Inc. ("**BMGI**"), for confirmation that the assignment by BMGI to the Japanese Government of its carbon credits, in the form of Joint Crediting Mechanism ("**JCM**") Program credits, from the operation of its Palayan Binary Power Plant ("**Palayan Binary**"), in exchange for cash received from the Japanese Government, constitutes a sale of carbon emission credit. Hence, the proceeds of which are exempt from any and all taxes pursuant to Section 15(i) of Republic Act ("**RA**") No. 9513.[1]

Background:

1. BMGI (Taxpayer Identification Number:) is a domestic corporation the primary purpose of which is to engage in the business of generating, storing, transmitting, and/or distributing energy including electricity and ancillary power derived from any and all forms, types, and kinds of renewable and other energy sources for lighting, power and other purposes;

2. BMGI is registered with the Department of Energy ("**DOE**") as a Renewable Energy ("**RE**") Developer of the Bac-Man Geothermal Power Plant Complex ("**BGPPC**") located in Bacon, Sorsogon/Manito, Albay under Certificate of Registration No. GOC 2012-04-039 dated May 8, 2012 and covered by Geothermal Operating Contract No. 2012-04-027 with date of effectivity on May 8, 2012.

3. BMGI is registered with the Board of Investments ("**BOI**") as an RE Developer for its various RE projects, including BMGI's 29 Megawatt ("**MW**") Palayan Binary, which

[1] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, December 16, 2008.

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is registered with the BOI under Certificate of Registration No. dated May 6, 2021.

4. Mitsubishi Heavy Industries, Ltd ("**MHI**") is an entity duly organized and existing under the laws of Japan.

5. BMGI and MHI (the Japanese participant) entered into an agreement, which took effect on September 18, 2020, to: (a) establish an International Consortium called the "*Palayan ORC Binary Geothermal Power Plant Consortium,*" and (b) utilize the financing programme for the project of carbon dioxide emission reductions as "The Joint Crediting Mechanism Model Project 2020" (the "**Agreement**").

6. The JCM program, subject of the Agreement, is a bilateral economic collaboration between Japan and its partner country (in this case, the Philippines) that focuses on the tracking of carbon credits as the quantitative evidence of greenhouse gas ("**GHG**") emission reductions or removals. These carbon credits, also called "JCM credits," would be acquired by the Japanese Government to achieve Japan's GHG emission reduction target under the Kyoto Protocol.

7. The Palayan Binary utilizes a technology that allows it to generate electricity without producing GHG, hence, was registered with the JCM program of the Japanese Government.

8. Under the Agreement, and in relation to the JCM Guidelines, the Japanese Government, acting through the Ministry of Environment in Japan ("**MOEJ**"), provides funding for the construction of the Palayan Binary (through MHI). In consideration of this funding, at least fifty percent (50%) of the JCM credits that will be generated from the GHG emission achieved through the Palayan Binary's operations will be assigned to the Japanese Government.

In reply, please be informed that Section 15(i) of RA No. 9513 provides that the proceeds from the sale of carbon emission credits are exempt from any and all taxes, including, but not limited to, income tax and value-added tax ("**VAT**') to *wit*:

> *"Section 15. Incentives for Renewable Energy Projects and Activities. — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:*
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> xxx xxx xxx
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> *(i) Tax Exemption of Carbon Credits — All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes."* (Underscoring supplied)

The above fiscal incentive is also stated in Section 4(F) of Revenue Regulations ("**RR**") No. 7-2022,[2] which was issued by the Bureau to institutionalize the tax incentive provisions of RA No. 9513.

Therefore, applied in this case, all proceeds from sale of carbon credits by BMGI is exempt from all taxes, provided, that it complies with the conditions stated under RA No. 9513 and RR No. 7-2022.

Article 1458 of the Civil Code of the Philippines provides that by a contract of sale, "one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay thereof a price certain in money or its equivalent." Hence, the requisites of a valid contract of sale are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.[3] In a contract of sale, its perfection is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract.[4]

A perusal of the Agreement shows that the elements of a contract of sale are present in the case at bar. *First*, by signing the Agreement, the parties indicate their consent to all the rights and obligations outlined therein, including the transfer of ownership of the carbon credits to the Japanese Government for a price. *Second*, the determinate subject matter is at least 50% of the JCM credits generated from Palayan Binary's operations. *Lastly*, the funding to be made (or the consideration to be paid) by the Japanese Government is equivalent to the costs that can be verified as having been spent for implementation of the project. Hence, there is a "price certain in money" involved in the transaction. Clearly the transaction envisioned under the Agreement is a sale of carbon credits.

Moreover, the project is in line with the Memorandum of Cooperation between Japan and the Republic of the Philippines on Low Carbon Growth Partnership dated January 12, 2017, and the JCM credits are in accordance with the JCM guidelines promulgated thereunder. The primary objective of such Memorandum is to promote investment and the use of technologies, products, systems, services and infrastructure in order to achieve low carbon growth in the Philippines based on the principles of equality, reciprocity and mutual benefit, in accordance with their respective domestic laws, regulations and environmental policies as well as their budget availability.

Having all these in regard, for tax purposes, the subject transaction partakes the nature of a sale, as contemplated under RA No. 9513 and RR No. 7-2022. It is a settled principle that equity and law always exalt substance over form. It is the nature of the instrument which will determine whether there is a sale or not and not the particular label or nomenclature of the document which embody them.[5] Simply put, the taxability of transactions or agreements depends on their substance which is paramount over their forms.

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[2] Tax Incentives Under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof, June 22, 2022.

[3] Naranja v. Court of Appeals, G.R. No. 160132, April 17, 2009; BIR Ruling No. 649-2018, April 11, 2018.

[4] Heirs of Dr. Mario S. Intac and Angelina Mendoza-Intac v. Court of Appeals, G.R. No. 173211, October 11, 2012.

[5] Villarica Pawnshop, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 293 (C.T.A. Case No. 7047), January 16, 2008; Commissioner of Internal Revenue v. Meridien East Realty & Development Corp., C.T.A. EB Case No. 2287 (C.T.A. Case No. 9130), July 14, 2022; BIR Ruling No. VAT-088-21, April 8, 2021.

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Such being the case, this Office hereby rules that the delivery of carbon emission credits under the JCM program by BMGI to the Japanese Government is actually a sale. Hence, the proceeds received by BMGI relating to such sale (or the funding received from the Japanese Government) is exempt from any and all taxes, including, but not limited to income tax and VAT, under the existing laws, rules and regulations.

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

Very truly yours,

LARRY M. BARCELO
Assistant Commissioner
Legal Service
RDAO No. 02-2020

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