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

Revenue Regulations No. 2-98; Revenue Regulations No. 30-2003; Regulations No. 11-2018; Revenue Memorandum Circular No. 39-2007
BIR Ruling No. 213-2015
OT- 093-2023
NOV 09 2023

PKI MANUFACTURING AND TECHNOLOGY, INC.
Service Support Building (SSB)
Administration Area
Lot 14, Phase 1-A, FPIP
Sto. Tomas, Batangas
Philippines

Attention: **MASAYUKI SEKIGUCHI**
General Manager

Gentlemen:

This refers to your request for confirmation that only the income of PKI Manufacturing and Technology, Inc. ("**PKI**") from the agency/administrative fee received from its customers/clients is subject to withholding tax.

Background

1. PKI is a company organized and existing under the laws of the Philippines, registered with the Securities and Exchange Commission ("**SEC**") with Company Registration No. and with the Department of Labor and Employment ("**DOLE**") at Regional Office No. IV-A with Certificate of Registration No.

2. PKI is engaged in the business of: (1) providing any and all forms or types of services and facilities relating to placement or employment; and (2) contracting and recruiting workers to carry out and undertake activities including the supply of janitorial, messengerial and other manpower services.

3. PKI charges its customers/clients an administrative fee of ten percent (10%) of the total contract costs in accordance with Section 11(b)(iii) of Department Order No.

174, Series of 2017.[1] The total contract cost includes, but not limited to, the following:

a. net salaries computed based on DOLE guidelines with deductions for withholding tax on compensation, if applicable;

b. employer share for Social Security System ("**SSS**"), Philhealth and Home Development Mutual Fund ("**HDMF**"); and

c. Proportion of the 13th month.

In reply, please be informed that Section 2.57.2(C)(4)(g) of Revenue Regulations No. 2-98,[2] as amended states that a creditable income tax shall be withheld from the gross payments to contractors relating to the provision of messengerial, janitorial and other manpower services, to *wit:*

> *"**Sec. 2.57.2 Income payment subject to creditable withholding tax and rates prescribed thereon** - Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:*
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> *xxx xxx xxx*
>
> ***(C) Income payments to certain contractors** – On gross payments to the following contractors, whether individual or corporate – Two percent (2%)*
>
> *xxx xxx xxx*
>
> *(4) Other Contractors –*
>
> *xxx xxx xxx*
>
> *(g) Messengerial, janitorial, private detective and/or security agencies, credit and/or collection agencies and other business agencies;"* (Underscoring supplied)

In determining the gross payments as basis of the withholding tax, you mentioned that you wish to apply to other manpower services the provisions in Revenue Memorandum Circular ("**RMC**") No. 39-2007[3] that is applicable to security agencies for the reason that, in substance, both offers manpower services to customers/clients. RMC No. 39-2007, citing

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[1] Rules Implementing Articles 106 to 109 of the Labor Code, as amended, March 16, 2017.

[2] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as amended" relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

[3] Clarifying the Income Tax and VAT Treatment of Agency Fees/Gross Receipts of Security Agencies Including the Withholding of Taxes Due thereon (addressed to all Security Agencies, their Clients, Internal Revenue Officers and Others Concerned), January 22, 2007.

Section 1, Rule XIV of the 1994 Revised Rules and Regulations implementing Republic Act No. 5487, as amended, which governs the "Organization and Operation of Private Security Agencies and Company Security Forces throughout the Philippines," provides that salaries of the guards received by a security agency from its customers/clients are earmarked and segregated for the said guards, hence, they do not form part of the security agency's gross income and, therefore, not subject to withholding tax. To *wit* –

> *"It is now well settled that only receipts which is subject to a taxpayer's unfettered command and which he is free to enjoy at his own option is taxed to him as his income whether he sees fit to enjoy it or not. (Corliss v. Bowers, 281 U.S. 376). In view of the clear language of the law and its implementing regulations placing the primary obligation on the Client to pay the salaries of the security guards coupled with the requirement that the monies received by the Security Agency representing salaries shall be earmarked and segregated for the said guards, the amount paid by the Client representing the salaries of the security guards will not form part of the Security Agency's gross income, and neither will it form part of its taxable gross receipts when actually or constructively received. This peculiarity obviously places the Security Agency on a tax situation different from other service providers."* (Underscoring supplied)

Please note that this Office has already ruled that the tax situation of security agencies is different from the other service providers. In the case of security agencies, the primary obligation to pay the salaries of the security guards lies on the customer/client, in case of other service providers, such obligation lies on the said service providers and not on the customer/client.[4]

Likewise, in the interpretation of statutes, it is an established rule not to extend their provisions by implication, beyond the clear import of the language employed, or to enlarge their scope as to include matters not specifically pointed out. A perusal of RMC No. 39-2007 shows that it is specifically applied to security agencies. There is nothing in its context that would manifest or suggest the intention to have it applied to other manpower agencies such as janitorial or messengerial services. Hence, RMC No. 39-2007 will only apply to security agencies.[5]

Further, it is clear that "Gross Payments" refers to the amount received by the service provider. Please note that it is a cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the above provision is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure.[6]

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[4] BIR Ruling [DA-(C-003) 020-10] dated January 29, 2010; BIR Ruling No. 213-2015 dated June 19, 2015; BIR Ruling No. 212-2015 dated June 19, 2015.

[5] *Id.*

[6] Cynthia S. Bolos v. Danilo T. Bolos, G.R. No. 186400, October 20, 2010

Given the foregoing, the income payments of customers/clients to PKI, which includes not only the agency or administrative fees but also the salaries, employer share for SSS, Philhealth and HDMF, and proportion of the 13th month, shall be subject to withholding tax.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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