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

Section 22(EE), 108 (2) of the Tax Code; Revenue Regulations No. 16-2005
BIR Ruling No. 455-2011; BIR Ruling No. 413-2012; BIR Ruling No. 119-2014; BIR Ruling No. 1065-2018; BIR Ruling No. VAT-014-2021; BIR Ruling No. VAT-075-2021
VAT- 104-2022 MAR 30 2022

G2 OCEAN LTD - ROHQ
17th Floor, Times Plaza Building
United Nation corner Taft Ave.
Ermita, Manila

Attention: **MS. SHIRLY L. CANICOSA**
Accounts Manager

Gentlemen:

This refers to your request on behalf of G2 Ocean Ltd. – ROHQ, formerly Gearbulk Management Limited - ROHQ ("**Corporation**"), for confirmation of your opinion that the Corporation's transactions in relation to the services it provides to its customers are subject to zero-rated value added tax ("**VAT**") pursuant to Section 108 (B) (1) and (2) of the National Internal Revenue Code of 1997, as amended ("**Tax Code**"), which may later be claimed for refund pursuant to Section 112 (A) of the Tax Code.

Background

1. The Corporation, with Taxpayer Identification No. and with registered address at 17th Floor, Times Plaza Building, United Nations corner Taft Avenue, Ermita, Manila, Philippines, is duly registered with the Securities and Exchange Commission ("**SEC**") with license number as the Philippine regional operating headquarters of G2 Ocean Ltd. ("**G2 Ocean**"), a company organized and existing under the laws of Islands of Bermuda, with office address at 3rd Floor, Par La Ville Place, 14 Par La Ville Road, Hamilton, Bermuda, which is also the Corporation's ultimate parent entity.[3]

2. The Corporation has service level agreements ("**SLA**") with the following non-resident foreign corporations doing business outside of the Philippines: (a) G2 Ocean AS, a company organized under the laws of Norway, with registered office at Grieg-Gaarden,

[1] Per Certificate of Registration issued by the Bureau of Internal Revenue on April 19, 2012.
[2] Per General Information Sheet ("**GIS**") for year 2021, received by the SEC on June 11, 2021 and Certificate of Non-Registration of Company issued by the SEC on October 5, 2021; No SEC documents submitted except for the GIS for ROHQ.
[3] Per Secretarial Certificate dated June 9, 2021 signed by Ms. Shelley R. Durrant, Secretary of G2 Ocean Ltd.

VAT- 104-2022
MAR 30 2022

C. Sundtsgate 17/19, P.O. Box 781 Sentrum, N0-5807, Bergen, Norway; (b) Gearbulk Norway AS, a company incorporated in Norway with registered office at Damsgardsveien 165, 5160 Laksevag, Bergen, Norway; and (c) Gearbulk Pool Limited, a company organized and existing under the laws of Bermuda, a resident in Norway and with registered office at Damsgardsveien 165, 5160 Laksevag, Bergen, Norway (collectively, the "**Customers**").[4]

3. Under the SLAs, the Corporation is providing the Customers financial services (purchasing, invoicing, accounting including marine and vessel accounting, accounts payable/receivable services, treasury support, TC settlements), human resources services, voyage administrative and operation support (TC operation support, procurement and logistics services and laytime and demurrage calculation), vessel operational services including periodic maintenance services, IT support, claims and insurance, office space and related services, and other business and corporate support services related to the same.

4. Clause 5.1 of the SLA between the Corporation and G2 Ocean AS, dated March 23, 2018 and effective May 2, 2017 ("**SLA – G2 Ocean AS**") states that the Corporation shall not provide services to any person or entity outside the G2 Ocean group without the prior written consent of G2 Ocean AS. Under Clause 5.5 of the SLA - G2 Ocean AS, the Corporation was allowed to perform services to the Gearbulk group as set out in the agreement between the Corporation and Gearbulk Management Switzerland AG.

5. In consideration for the services provided, the Corporation sends its billing to the Customers through an invoice which indicates the amount due both in Philippine Peso ("**PHP**") and United States Dollars ("**USD**") (or Norwegian Kroner ("**NOK**"), as the case may be) at the exchange rate prevailing at the date of billing.

6. The Corporation has two (2) accounts with the BDO Unibank, Inc. ("**BDO**") where Customers may deposit their payments: (a) USD account; and (b) PHP account.

7. Based on the Certificate of Inward Remittances issued by the BDO and bank remittances advice from Customers, some of the Customers are depositing their foreign currency payments to the Corporation's USD account where BDO directly converts such inward remittances in foreign currency to PHP through telegraphic transfer and subsequently credits the same to the Corporation's PHP bank account, while other Customers directly deposit their foreign currency payments to the Corporation's PHP bank account.

It is further represented that, in order to protect the Corporation from foreign currency loss and avoid monitoring two sets of bank accounts (USD and PHP), the Corporation is planning to maintain only its PHP account where the Customers can deposit their foreign currency payments to the Corporation.

In reply, please be informed that Section 108 (B) (1) and (2) of the Tax Code, as implemented by Section 4.108-5 (b) (1) and (2) of Revenue Regulations No. 16-2005, as amended,[5] provide that payments received from services rendered to non-resident person who

[4] Per Certificate of Non-Registration of Corporation/Partnership
[5] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

is outside the Philippines when such service is performed, and the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* ("**BSP**"), shall be subject to zero percent (0%) VAT, to *wit*:

> ***Sec. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.*** —
>
> *xxx xxx xxx*
>
> *(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:*
>
> *(1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);*
>
> *(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident 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 Bangko Sentral ng Pilipinas (BSP);"* (Underscoring supplied)

In BIR Ruling No. 455-2011[6] and several jurisprudences,[7] it was held that in order to qualify for VAT zero rating under Section 108 (B) (2) of the Tax Code, the following requisites must concur:

1. The services must be performed in the Philippines by the VAT-registered person;
2. The services must be other than processing, manufacturing or repacking of goods;
3. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;
4. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Applying the provisions of law and jurisprudential authorities cited above to the case under consideration, since the Corporation is: (1) a VAT-registered entity;[8] (2) providing the Customers services which fall squarely under Sections 108 (B) (1) and (2) of the Tax Code;[9] and (3) rendering service to customers who are non-resident corporations as evidenced by the Certificates of Non-Registration of Company issued by SEC dated October 5, 2021 and

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[6] November 16, 2011; BIR Ruling No. 1065-2018 dated July 12, 2018.
[7] *CIR v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007, cited *in Citco International Support Services Limited — Philippine ROHQ v. Commissioner of Internal Revenue*, C.T.A. Case No. 9102, July 2, 2018; *Commissioner of Internal Revenue v. Citco International Support Services Limited-Philippine ROHQ*, C.T.A. EB Case No. 2015, November 29, 2019; *SC Johnson Philippines, ROHQ v. Commissioner of Internal Revenue*, C.T.A. Case No. 9357 (Resolution), June 16, 2020.
[8] Per the Corporation's Certificate of Registration issued by the Bureau of Internal Revenue.
[9] Per the SLAs between the Corporation and its Customers.

their respective Articles of Association/Incorporation, it appears that the first three requisites were satisfied.

On the fourth requisite, to reiterate, the Tax Code provides that the payments for the services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations. In the case of *Commissioner of Internal Revenue v. Citco International Support Services Limited-Philippine ROHQ*,[10] the Court held that, considering that the services covered by Sections 108 (B) (1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines, under the BSP rules, the proceeds of such export sales must be reported to the BSP. Hence, it is clear that the proceeds of the foreign currency that was paid and received by the Corporation in consideration for the services rendered must be accounted for to the BSP.[11]

Clause 7.3 of the SLA - G2 Ocean AS reads:

*"**7. REMUNERATION***

xxx xxx xxx

7.3 Payments set forth in Clause 7 herein shall be effected in USD from 2 May 2017 until and including 28 February 2018, from 1 March 2018 payments shall be effected in PHP. Payments shall be made through wire transfer of immediately available funds in the bank account to be specified in writing by the Service Provider.

7.4 The Invoice to the Recipient shall include value added taxes and surcharges applicable to the payment of the Renumeration hereunder, as well as any bank charges on the transfer of funds." (Underscoring supplied)

Similarly, Clause 7.3 of the SLA between the Corporation and Gearbulk Pool Limited and Gearbulk Norway AS dated June 28, 2019 states:

*"**7. REMUNERATION AND BUDGET***

xxx xxx xxx

7.3 Payments set forth in Clause 7 herein shall be effected in Philippine Peso, through wire transfer of immediately available funds in the bank account to be specified in writing by the Service Provider." (Underscoring supplied)

The afore-quoted clauses in the SLAs show that payments for the services performed by the Corporation shall be effected in Philippine Peso and not in acceptable foreign currency, which is contrary to the requisite mentioned above. Hence, the fourth requisite was clearly not satisfied.

Accordingly, this Office is in the position that the transactions of the Corporation with the Customers do not fully comply with requisites set forth in Section 108 (1) and (2) of the Tax Code, jurisprudence and other related laws and regulations. Such being the case, the sale of the foregoing services by the Corporation is not zero-rated, but is appropriately subject to

[10] C.T.A. EB Case No. 2015, November 29, 2019.
[11] BIR Ruling no. 413-2012 dated July 15, 2012; BIR Ruling 455-2011 dated November 16, 2011.

VAT- 104-2022
MAR 30 2022

twelve percent (12%) VAT. It must be emphasized that in order for the zero percent (0%) VAT rate to apply, the Corporation must show that its transactions fully comply with the above-mentioned requirements.[12]

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,

CAESAR R. DULAY
Commissioner of Internal Revenue
051422

[12]; BIR Ruling No. 119-2014 dated May 6, 2014; BIR Ruling No. 1065-2018 dated July 12, 2018; BIR Ruling No. VAT-014-2021 dated February 3, 2021; BIR Ruling No. VAT-075-2021 dated March 18, 2021.