January 20, 2020

BIR RULING NO. OT-006-20

23 (F); 42 (C) (3); 108 (A) NIRC of 1997, as amended; BIR Ruling No. 345-2011

Aranas Law
Ground Floor, Le Metropole Building
326 Tordesillas corner dela Costa Streets
Salcedo Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 23, 2009 requesting confirmation that the service fees paid by **SCS Global Business Solutions, Inc. ("SCS Business Solutions")** to **SCS Global Holdings Pte. Ltd. ("SCS Holdings")** are exempt from Philippine income tax.

SCS Holdings is a foreign corporation organized and existing under the laws of Singapore and is a resident thereof based on the Certificate of Residence issued by the Inland Revenue Authority of Singapore on October 1, 2009. **SCS Holdings** is situated at 89 Short Street, Singapore. **SCS Holdings** is not registered as a corporation or partnership in the Philippines based on the Certification of Non-Registration of Corporation/Partnership issued by the Securities and Exchange Commission on June 8, 2009. On the other hand, **SCS Business Solutions** is a domestic corporation situated at the 14th Floor, Makati Skyplaza Building, 6788 Ayala Avenue, Makati City, Philippines.

On August 1, 2008, **SCS Business Solutions** and **SCS Holdings** entered into a **Marketing Support Agreement** where **SCS Holdings** agreed to provide the following services to **SCS Business Solutions**, to be done generally in Singapore:

a) Review of monthly statement;

b) Review of cash flow projection and setting the timing of settlement;

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c) Remote consultation on individual and environmental hygiene in business office;

d) Remote support for computer alliance;

e) Checking and guidance on interim and annual closing of accounts (bank reconciliation and accounts analysis);

f) Support for dispatched and temporary transferred persons abroad:

- Arrangement and adjustment of air ticket, passport and visa;
- Arrangement of vaccination;
- Procedure for overseas accident insurance and overseas workmen's compensation insurance;
- Training on local language;
- Training on business manner; and
- Conduct of seminar for spouses who go abroad.

In consideration, **SCS Business Solutions** will pay service fees to **SCS Holdings** equivalent to three percent of the former's total sales every quarter. The Agreement took effect on August 1, 2008 and renewed for subsequent periods of one-year.

Based on the Certification issued by the Director of **SCS Business Solutions** on July 15, 2010, **SCS Holdings** has not sent any personnel to the Philippines to perform services to **SCS Business Solutions** pursuant to the Agreement. **SCS Holdings** provides offsite marketing support services to **SCS Business Solutions** in the following manner:

a) Provide **SCS Business Solutions** with information on investments of Japanese companies in Asian countries including the Philippines;

b) Refer **SCS Business Solutions** to top management and decision makers of Japanese companies or its subsidiaries located in Singapore and that are considering to place or establish investments in the Philippines; and

c) Manage, organize, conclude and administer (in Singapore) all contracts and agreements entered into with Japanese companies or its subsidiaries (including the terms and conditions thereof) including contracts and agreements between **SCS Business Solutions** and another company in the SCS Group.

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In reply, please be informed that under Section 23 (F) of the National Internal Revenue Code of 1997 **("Tax Code")**, as amended, a foreign corporation like **SCS Holdings**, whether or not engaged in trade or business in the Philippines, is subject to income tax **only** with respect to income derived from sources **in the Philippines**, to wit:

> ***"SEC. 23. General Principles of Income Taxation in the Philippines.*** *— Except when otherwise provided in this Code:*
>
> xxx xxx xxx
>
> *(F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines."* (Emphasis ours)

Concerning income from the provision of services, under Section 42 (A) (3) of the Tax Code, this is considered derived **in the Philippines** only if the services are **actually performed in the Philippines**, to wit:

> ***"Section 42. Income from Sources within the Philippines.*** *—*
>
> ***(A) Gross Income from Sources within the Philippines.*** *— The following items of gross income shall be treated as gross income from sources within the Philippines:*
>
> xxx xxx xxx
>
> *(3) Services. — Compensation for labor or personal services performed in the Philippines"*; (Emphasis ours)

Accordingly, since **SCS Holdings** performed the services required of it under the Agreement entirely in Singapore, service fees paid by **SCS Business Solutions** to **SCS Holdings** for these services shall be **exempt** from income tax, pursuant to Section 23 (F), in relation to Section 42 (A) (3), of the Tax Code. (*BIR Ruling No. 345-2011* dated September 22, 2011)

Finally, with respect to value-added tax **("VAT")**, payments for the sale or exchange of services, including the use or lease of properties are subject to VAT only if the services are performed in the Philippines. Section 108 (A) of the Tax Code, as amended, provides:

> ***"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.*** *—*
>
> ***(A) Rate and Base of Tax.*** *— There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties:*

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Provided, that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, [1] *raise the rate of value-added tax to twelve percent (12%) . . .*

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration . . ."

Based on the foregoing, since such services are performed by **SCS Holdings** outside the Philippines, the service fees to be paid therefor by **SCS Business Solutions** to **SCS Holdings** are likewise exempt from VAT.

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

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

Footnotes

1. The VAT rate was increased to 12 percent beginning February 1, 2006, in accordance with the Memorandum of the Executive Secretary to the Secretary of Finance dated January 31, 2006, as circularized by Revenue Memorandum Circular No. 7-2006 (Publishing the Full Text of the Memorandum from Executive Secretary Eduardo R. Ermita dated January 31, 2006. Approving the Recommendation of the Secretary of Finance to Increase the Value Added Tax Rate from Ten Percent to Twelve Percent) dated January 31, 2006.

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