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

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| Section 27(D) 1 and 105 of the Tax Code of 1997, as amended | 000-00 | #069-2016 |

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36/ 927-09-63

Date: February 29, 2016

**A.Q. ANCHETA & PARTNERS**
Suites 1008-1010 Paragon Plaza
162 EDSA cor. Reliance St.
Mandaluyong City

Attention: **ALONZO Q. ANCHETA**

Gentlemen:

This refers to your letter dated September 1, 2010 requesting on behalf of Tanguile Development Corporation (TANGUILE for brevity) for a confirmation of your opinion that the Mining Royalties received by Tanguile from Philex Mining Corporation (PHILEX) are not subject to the regular Corporate Income Tax and Value Added Tax and that the subject royalties are passive income subject only to twenty percent (20%) final withholding tax.

It represented that TANGUILE is a domestic corporation duly registered with Securities and Exchange Commission (SEC) under Company Registration No. ; that it is primarily engaged in the business of buying, selling, dealing in, leasing, holding, improving and otherwise disposing of real properties, of whatever kind and nature, or any interest therein and to introduce thereon all kinds of improvements, hold, manage and administer the same or to act therein as agent, attorney-in-fact, purchasing agent, and general agent without necessarily engaging in subdivision business; that the mining royalties[1] were procured by TANGUILE to PHILEX merely as a form of Long-term Investment; and that TANGUILE does not have rights or has ever had rights to any mineral land nor engaged or has ever engaged in the business of mining operations, including for exploring, developing and/or utilizing any mineral land.

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[1] As confirmed by Mr. George T. Scholey through his counsel, Quasha, Asperilla, Ancheta, Valmote, Peña & Marcos, that the assignment of a percentage of his royalties to Tanguile, that it is not engaged in mining and did not participate in any way for the production of ore from Nevada mining claims

In reply thereto, please be informed that Section 27 (D) (1) of the Tax Code of 1997, provides that —

> *"(D) Rates of tax on certain passive incomes. —*
>
> *(1) Interest from deposits and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements, and royalties. — A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: Provided, however, that interest income derived by a domestic or a resident foreign corporation from a depository bank under the expanded foreign currency deposit system shall be subject to a final tax at the rate of seven and one-half percent (7 1/2%) of such interest income. . . ."*

In applying the above-cited provision, it is undisputed that the royalties received by TANGUILE are in the nature of ordinary business income because the aforesaid income was derived or generated from activities that are in accordance with the purposes provided in its Articles of Incorporation: *To engage in the mining and fishing industries.*

Thus, the royalty income derived by TANGUILE from PHILEX in the conduct of its business shall form part of its ordinary income subject to the 30% regular corporate income tax.

Moreover, Section 105 of the Tax Code of 1997, provides that;

> *"Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the said Code. . ."*
>
> *The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.*

The royalties received by TANGUILE made in the course of trade or business and engaged in the business of mining as reflected under its Articles of Incorporation is subject to VAT.

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SUCH BEING THE CASE, the royalty income derived by TANGUILE in the conduct of its business shall be subject ordinary income subject to the 30% regular corporate income tax and ~~will~~ subject to VAT.

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

Very truly yours,

**KIM S. JACINTO-HENARES**
Commissioner of Internal Revenue

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