REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Bureau of Internal Revenue Ruling

108(B)(3); RA 7916; RR 16-2005; RMC 74-99; RMC 61-05	000-00	084-2016 3-14-2016

Person to Contact: Chief, Law Division
Tel Nos. 926-5536/927-0963

SGV & CO
6760 Ayala Avenue
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Attention: **Atty. Fabian K. Delos Santos**
Partner, Tax Services

Gentlemen:

This refers to your letter dated November 22, 2012 requesting on behalf of your client, CJ Toyota Tsusho Philippines, Inc. ("CJ Toyota" for brevity), for confirmation that the Company's purchase of electricity from the generation, transmission and distribution companies is subject to value-added tax (VAT) at zero percent (0%) rate.

Background

CJ Toyota (TIN is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) on September 8, 2009 and with the BIR on October 22, 2009. It is engaged in the manufacture, marketing, promotion, distribution, sale and export of Xylose. CJ Toyota was registered with the Philippine Economic Zone Authority (PEZA) under Certificate of Registration No. dated May 17, 2010 as an Ecozone Export Enterprise at DADC Economic Zone located in Barangay Darong, Sta. Cruz, Davao del Sur. As such, CJ Toyota is entitled to incentives pursuant to its Registration Agreement with the PEZA and PEZA Certification No. dated May 23, 2012, which include, among others, an income tax holiday (ITH) ot 4 years and exemption from national and local taxes, in lieu thereof, payment of 5% tax on gross income earned.

Pursuant to CJ Toyota's Contract for the Supply of Electric Energy with Davao del Sur Electric Cooperative, Inc. (DASURECO), the latter shall supply electric power and energy to CJ Toyota based on the contracted energy demand (i.e., contract demand of 2,700 kw and contract energy of 2,157,600 kwh). Currently, DASURECO is passing on 12% VAT to CJ Toyota for its contracted energy demand. DASURECO contends that the 12% VAT billed to CJ Toyota represents the VAT on the charges of the generation

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and transmission companies, i.e., Power Sector Assets and Liabilities Management Corporation (PSALM), National Grid Corporation of the Philippines (NGCP) and Therma Marine, Inc. (TMI) which are only pass-through charges of DASURECO as the distributor of electricity.

In reply thereto, please be informed that Section 108(B)(3) of the Tax Code of 1997, as amended by Republic Act (RA) No. 9337 provides, to wit:

> "Section 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:
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

Implementing the above provision is Section 4.108-5(b)(3) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, wherein the services rendered by VAT-registered suppliers to persons or entities whose exemption under special laws (such as RA 7916) or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate, to wit:

> **"SECTION 4.108-5. Zero-Rated Sale of Services. —**
>
> (a) In general. — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.
>
> (b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

In relation thereto, Revenue Memorandum Circular (RMC) No. 74-99, particularly Section 3 thereof, further provides:

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"SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise.

(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

(a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77 (2) of the Omnibus Investments Code.

(b) Sale of service. — This shall be treated as subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77 (2) of the Omnibus Investments Code.

(b) Sale of Service. — This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent

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(0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."

Finally, RMC No. 61-05 further clarifies the VAT treatment of sales of electricity to PEZA locators or SBMA-registered enterprises, to wit:

"Q19 What is the treatment of sales of electricity (by generation, transmission and distribution companies or electric cooperatives) to PEZA- or SBMA-registered enterprises?

A19 Since PEZA- or SBMA-registered enterprises are entitled to the five percent (5%) preferential tax rate under R.A. 7916 and R.A. 7227, respectively, sales of electricity by generation, transmission and distribution companies or electric cooperatives shall effectively be subject to the zero percent (0%) VAT rate. Sales to enterprises duly-registered and accredited with the SBMA and PEZA shall effectively be subject to zero percent (0%) VAT. The zero-percent (0%) VAT rate shall not apply to sales made to individuals who are mere residents in the PEZA Ecozone or Subic Bay Freeport and Economic Zone."

There are different types of PEZA-registered enterprises under R.A. No. 7916. An ECOZONE may contain any or all of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones, and Tourist/Recreational Centers. Of the foregoing classification of ECOZONE enterprises, those under the Export Processing Zone are the ones whose products are destined to, used or consumed abroad. Following our VAT Regime which adheres to the Consumption Type VAT or the Destination Principle, sales of goods, property and services to ECOZONE enterprises engaged in export processing business shall, accordingly, be considered qualified for effective zero rated VAT pursuant to the afore-quoted provisions of the law and its implementing regulations considering that their export products are destined for use or consumption outside the Philippines and such export products must be free from VAT which otherwise are indirectly passed on by suppliers of goods, property or services.

Hence, considering that CJ Toyota is a PEZA-registered Export Enterprise and whose products are destined to, used or consumed outside of the Philippines, its purchase of electricity from generation, transmission and distribution companies, falls within the transaction contemplated under Section 108(B)(3) of the Tax Code of 1997, as amended, and as implemented by Section 4.108-5 (b)(3) of RR No. 16-2005, as amended by RR No. 4-2007, RMC No. 74-99 and RMC No. 61-05, which is subject to VAT at zero percent (0%) rate.

Furthermore, since the purchase of electricity by CJ Toyota is considered export sale and subject to zero percent (0%) VAT, generation, transmission and distribution companies shall not impute or shift any VAT as part of the cost to be paid by CJ Toyota on its purchase of electricity. It should be noted, however, that the supporting documents as required by existing BIR rules and regulations, such as invoices/receipts with the term "ZERO-RATED SALE" written or printed prominently on the invoice or receipt pursuant to RMC No. 62-2005, to qualify for VAT zero-rating, shall be submitted by the

generation, transmission and distribution companies to the concerned BIR offices to validate their status as zero-rated sellers.

Accordingly, this Office hereby confirms that CJ Toyota's purchase of electricity from the generation, transmission and distribution companies is subject to value-added tax (VAT) at zero percent (0%) rate.

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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