July 12, 2018

BIR RULING NO. 1061-18

Secs. 23 (F), 42 (A) (3), (C) (3), and 108 (A), all of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 068-2013

Isla Lipana & Co.
29th Floor, Philamlife Tower
8767 Paseo de Roxas
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 01, 2015, requesting on behalf of your client, **CBRE Pte. Ltd. ("CBRE" for brevity)**, for confirmation that the fees it will be receiving from Pilipinas Shell Petroleum Corporation ("Pilipinas Shell" for brevity) for services rendered entirely outside of the Philippines are not subject to income tax, withholding tax, and value added tax (VAT), pursuant to Sections 28 (B) (1) and 42 (C) (3) of the National Internal Revenue Code of 1997, as amended.

Background:

CBRE is a corporation duly organized and existing under the laws of Singapore with office address at No. 6 Battery Road, #32-01, Singapore 049909. It is engaged in the business of providing management consultancy services, among others, to various clients worldwide. It has no fixed place of business in the Philippines, and is neither registered as a corporation nor as a partnership in the Philippines as confirmed by the Securities and Exchange Commission (SEC).

On the other hand, Pilipinas Shell is a corporation duly organized and existing under the laws of the Philippines with principal office address at Shell House No. 156 Valero Street, Salcedo Village, Brgy. Bel-Air, Makati City 1227. It is registered with the Bureau of Internal Revenue (BIR) per Tax Identification Number (TIN) 000-000-000 and with the SEC under SEC Registration Number 14829, and is duly authorized to engage in the business of manufacturing, refining, and marketing of petroleum products.

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CBRE and Pilipinas Shell entered into a Purchase Contract for the Supply of Regional Service for Retail Real Estate in the Philippines. Under the terms of the Purchase Contract, CBRE will render the following Central Team Services: set and drive best practices and global consistency, provide centralized reporting, and provide global supervision and advisory. The Purchase Contract will likewise not involve transfer of technology, know how or other intellectual property rights from CBRE to Pilipinas Shell.

The Purchase Contract commenced on September 1, 2014 and will expire on August 31, 2019. Under the terms and conditions of the agreement, the Central and Regional Teams based in London and Singapore, respectively, have the ultimate responsibility for the delivery of service. Also, the teams will not engage in any day-to-day activities in the Philippines. Further, Pilipinas Shell will implement the recommendations in the Philippines, although the consultancy services will be rendered in London and Singapore. Accordingly, the consulting services are rendered by CBRE entirely outside of the Philippines, specifically in London and Singapore. Hence, this request.

In reply, please be informed that under Section 23 (F) of the National Internal Revenue Code of 1997, as amended, a foreign corporation, like CBRE, 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 and underscoring supplied)

Concerning income from the provision of services, under Sections 42 (A) (3) and (C) (3) of the National Internal Revenue Code of 1997, as amended, income is considered derived in the Philippines only if the services are actually performed in the Philippines, to wit:

> *"SEC. 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****;*

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xxx xxx xxx

(C) Gross Income from Sources without the Philippines. — The following items of gross income shall be treated as income from sources without the Philippines:

xxx xxx xxx

*(3) Compensation for **labor or personal services performed without the Philippines**;" (Emphasis and underscoring supplied)*

In *Commissioner of Internal Revenue v. Marubeni Corporation*, [1] the Supreme Court held that only services rendered in the Philippines under a single contract are subject to the taxing jurisdiction of the Philippines and consequently subject to Philippine income tax. The Supreme Court ruled in this wise:

> *"Clearly, the service of design and engineering, supply and delivery, construction, erection and installation, supervision, direction and control of testing and commissioning, coordination. . ." of two projects involved two taxing jurisdictions. These acts occurred in two countries — Japan and the Philippines. While the construction and installation work were completed within the Philippines, the evidence is clear that some pieces of equipment and supplies were completely designed and engineered in Japan. The two sets of ship unloader and loader, the boats and mobile equipment of the NDC project and ammonia storage tanks and refrigeration units were made and completed in Japan. They were already finished products when shipped to the Philippines. The other construction supplies listed under the offshore portion such as the steel sheets, pipes and structures, electrical and instrumental apparatus, these were not finished products when shipped to the Philippines. They, however, were likewise fabricated and manufactured by the sub-contractors in Japan. All services for the design, fabrication, engineering and manufacture of the materials and equipment under Japanese Yen Portion I were made and completed in Japan. **These services were rendered outside the taxing jurisdiction of the Philippines and are therefore not subject to contractor's tax**."* (Emphasis and underscoring supplied)

Such being the case and since the subject services are rendered by CBRE outside the Philippines, the fees to be paid therefor by Pilipinas Shell to CBRE are exempt from income tax and consequently from withholding tax. ***(BIR Ruling 068-2013 dated February 18, 2013)***

With respect to 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 National Internal Revenue Code of 1997, as amended, provides that:

> *"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —*

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(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: Provided, that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006,* [2] *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. . ."* (Emphasis and underscoring supplied)

Accordingly, since the services are performed by CBRE outside the Philippines, the fees to be paid therefor by Pilipinas Shell are likewise exempt from VAT. ***(BIR Ruling 068-2013 dated February 18, 2013)***

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,

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

Footnotes

1. G.R. No. 137377, 18 December 2001.
2. 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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