July 12, 2018

BIR RULING NO. 1065-18

Sec. 108 (B) (2) of the NIRC, Tax Code, as amended; BIR Ruling No. 455-11; BIR Ruling No. 119-14

Phoenix Network Solutions, Inc.
Unit 12-1 IBM Plaza Bldg., Eastwood City
Bagumbayan, Quezon City 1110

Attention: *AAA*

Gentlemen :

This refers to your letter received by this Office on 11 January 2011 asking for confirmation of your opinion that Phoenix Network Solutions, Inc. (PHOENIX) is subject to VAT zero rating under Section 108 (B) of the Tax Code of 1997 on the Information Technology (IT) related and support services it provides for Genesis Networks Enterprises, LLC (GNE).

Documents disclosed that PHOENIX is a VAT registered domestic corporation with TIN No. 000-000-000-000. PHOENIX was originally incorporated under the name Genesis Network AsiaPacific (GAP), Inc. (GAPI) with Securities and Exchange Commission (SEC) Company Registration No. CS200904268 on 19 March 2009. On 4 July 2011, GAPI amended its articles of incorporation and changed its name to "Phoenix Network Solutions, Inc." The primary purpose of PHOENIX under its articles of incorporation is "to develop Information Technology (IT) related solutions and support services."

On 1 June 2009, GAPI (now PHOENIX) entered into a Master Services Agreement (SERVICE AGREEMENT) with GNE whereby PHOENIX provides for IT related solution and support service to GNE. On several occasion between 17 June 2009 and 9 May 2013, PHOENIX received a total of _____ US Dollars (US$_____) from GNE, Genesis Networks Integration (GNI) and Level 5 Consulting Engineers (LEVEL 5) as certified by the Metropolitan Bank and Trust Company under Certification Nos. 0329 and 0370 dated 27 May 2013 and 14 June 2013 respectively. Meanwhile, GNE, GNI and LEVEL 5 were all certified by the SEC as non-registered companies in three separate Certification of Non-Registration all dated 19

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June 2013.

In reply, please be informed that Section 4.108-5 (b) (2) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007, states that:

> *"(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
>
> *(2) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident 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 BSP;"*

In *BIR Ruling No. 455-11 dated 16 November 2011*, this Office stated that in order to qualify for VAT zero rating under the above stated provision, the following requisites must concur:

1. The services must be rendered to persons engaged in business outside the Philippines or to a non-resident foreign clients not engaged in business who are outside the Philippines when the services are performed; and

2. The fees must be paid to the domestic corporation in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Accordingly, since the IT related solution and support services are rendered by PHOENIX to GNE, a non-resident company as evidenced by the Certificate of Non-Registration of Company issued by SEC dated 19 June 2013, and paid for in acceptable foreign currency, as evidenced by Metropolitan Bank and Trust Company Certification Nos. 0329 and 0370 dated 27 May 2013 and 14 June 2013, the service fees paid therefor by GNE are subject to zero percent (0%) VAT pursuant to the above-cited laws and regulations. It must be emphasized, however, that the application of the 0% VAT rate on the sale of services of PHOENIX is not automatic and does not cover all its transactions as it must still show that said transactions fully comply with the above-mentioned requirements. *(BIR Ruling No. 119-14 dated May 6, 2014)*

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 as null and void.

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Very truly yours,

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

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