July 24, 2018

BIR RULING NO. 1101-18

Secs. 23 (F); 42 (C) (3); 108 (A) of NIRC;
BIR Ruling No. 459-12; BIR Ruling No.
331-12

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

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 14, 2015 requesting on behalf of your client, Renoir Consulting Ltd. ("RCL"), for confirmation of your opinion that the fees to be paid by Aboitiz Power Corporation ("APC") to RCL for services rendered entirely outside the Philippines is not subject to income, withholding and value-added taxes (VAT).

Background:

RCL is a corporation duly organized and existing under the laws of Mauritius with office address at c/o Kross Border Trust Services Ltd. St. Louis Business Centre CNR Desroches & St. Louis St. Port Louis. It is engaged in the business of providing management consulting to various clients worldwide. It has no fixed place of business in the Philippines and is not registered as a corporation or as a partnership in the Philippines as confirmed by the enclosed Certification of Non-Registration of Corporation/Partnership issued by the Philippine Securities and Exchange Commission (SEC) on March 19, 2015.

On the other hand, APC is a corporation duly organized and existing under the laws of the Philippines with principal office address at 32nd Street, Bonifacio Global City, Taguig City, Metro Manila. It is registered with the SEC under SEC Registration Number CE012436 and duly authorized to engage in the business of holding and managing generation and/or distribution companies or assets.

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To meet its requirement for improved business/project operations, APC deems it necessary to engage the services of a consultant who will assist in reviewing the progress of its projects. In this connection, APC has entered into an Offshore Design Services Agreement ("Agreement") with RCL on February 9, 2015.

Generally, under the Agreement, RCL will provide its services entirely outside of the Philippines which are essentially in the nature of consulting support.

RCL will review the progress of APC's projects. The service is delivered over electronic medium using net telephony with Skype, in particular, as the tool. The process is one of active support and not a passive exploitation of a pre-determined process, method or a formula.

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

Concerning income from the provision of services, under Section 42 (A) (3) of the Tax Code, income 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";

Based on the foregoing and since the support services are rendered by RCL outside the Philippines, the service fees to be paid therefor by APC to RCL are not subject to income tax and consequently, exempt from withholding tax. *(BIR Ruling No. 459-12 dated July 17,*

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2012)

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: 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 Philippine for others for a fee, remuneration or consideration . . ."

Accordingly, since such services are performed by RCL outside the Philippines, the service fees to be paid therefor by APC to RCL are likewise exempt from VAT. *(BIR Ruling No. 331-2012 dated May 14, 2012)*

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

Very truly yours,

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

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