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

Section 23 (F), Section 42 (A) (3) of the NIRC of 1997, as amended; Section 6 of RA 9337 amending Section 109 (A) of the NIRC of 1997, as amended
BIR Ruling No. 459-12 BIR Ruling No. 068-13
124-2018
2-2-2018

PERCEPTION GAMING INC. (PGI)
24th Floor, 6750 Ayala Office Tower,
6750 Ayala Avenue,
Makati City

Attention: **CHENG –PING "ALSON" HUANG**
President

Gentlemen:

This refers to your letter dated February 14, 2017, requesting for confirmation on behalf of your client, Perception Gaming, Inc. *(PGI, for brevity)*, that fees paid by PGI to ACE Trading Corporation *(ACE, for brevity)* and SUN MATRIX International Limited *(SUN MATRIX, for brevity)*, both non-resident foreign corporations, for services performed entirely outside the Philippines are not subject to income tax pursuant to Section 23(F) and Section 42 of the National Internal Revenue Code (NIRC) of 1997, as amended as well as Value Added Tax (VAT) pursuant to Section 6 of Republic Act (R.A.) No. 9337 amending Section 108 (A) of the NIRC of 1997, as amended.

It is represented that both ACE and SUN MATRIX are non-resident foreign corporations with principal place of business at Level 2, Lotemau Center Vaes Steet Apia, Samoa and No. 2-55, Huamei Ln., Zhongzheng Rd., Daya township County 428, Taiwan, R.O.C, respectively as evidenced by the notarized Marketing Service Agreement and Management Agreement.

In the Marketing Service Agreement entered into by PGI (Party B) and ACE (Party A), it was agreed that in consideration of a monthly fee of
plus 3% of total quarterly sales, ACE, as the marketing services provider will perform the following services outside the Philippines:

Xxx

a. **Promote or market the services and products of Party B to its clients in Samoa and other foreign clients** of Party A with Philippine operations, which includes making regular visits and representations with relevant corporate officers of such clients;
b. **Organize events in Samoa and other foreign countries** to market and promote of the products of Party B for foreign clients with Philippine operations;
c. Assist Party B in developing a marketing strategy to expand operations **outside of the Philippines**; and
d. Undertake such other incidental marketing activities as maybe requested by Party B **to promote the latter's business in Samoa and other countries**. (emphasis supplied)

Xxx

On the other hand, in the Management Agreement entered into by PGI and SUN MATRIX it was agreed that in consideration of a monthly service fee of [redacted] SUN MATRIX will render management consulting and strategic planning services to PGI, all of which will be performed outside the Philippines, mostly in Samoa.

The contracts entered into by PGI with ACE and SUN MATRIX both encompass rendition of services.

In reply, please be informed that under Section 23 (F) of the NIRC of 1997, as amended, foreign corporations, like ACE and SUN MATRIX, 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 ours)*

With regard to income from the provision of services, under Section 42 (A) (3) of the Tax Code, as amended, **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**;" (Emphasis ours)*

Considering that the marketing, consultancy and advisory services rendered by SUN MATRIX and ACE were all performed outside the Philippines, mostly in Samoa, the service fees to be paid therefor by PGI to these corporations are exempt from income tax. *(BIR Ruling No. 459-12 dated July 17, 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 NIRC of 1997, 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%) . . .*
>
> *Xxxx*
>
> *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 . . ."*

RR 12-4-2018
2-2-2018

Accordingly, since such services are performed by SUN MATRIX and ACE outside the Philippines, the service fees to be paid therefor by PGI to these corporations are likewise exempt from VAT. *(BIR Ruling No. 068-13 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.

CAESAR R. DULAY
Commissioner of Internal Revenue

012883

K-I-ASB