October 19, 2018

BIR RULING NO. 1266-18

Sections 22 (H), (I) & 52 (A), 1997 NIRC

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I.P. Integration Representative Office
Level 26-A Rufino Pacific Tower
Ayala Avenue, Makati
TIN: 000-000-000-00000

Sir :

This refers to your letters dated November 28, 2016 and February 28, 2017, which were forwarded to this Office by Revenue Region (RR) No. 8, Makati, requesting for exclusion of corporate income tax in the registered tax types as indicated in the Certificate of Registration (COR) of **I.P. INTEGRATION REPRESENTATIVE OFFICE**.

As represented, **I.P. INTEGRATION REPRESENTATIVE OFFICE ("I.P. Integration"** for brevity) is a representative office, a company organized and existing under the laws of United Kingdom of Great Britain and Northern Ireland, with License to do business in the Philippines. It is registered with the Bureau of Internal Revenue with Taxpayer Identification Number (TIN) No. 000-000-000-00000 as evidenced by Certificate of Registration (COR) No. OCN9RC0000707897E. It is required to file, among others, Corporate Income Taxes Returns or BIR Forms 1702Q and 1702.

The request for cancellation or exclusion of income tax in the Certificate of Registration is based on a recent Decision of the Court of Tax Appeals (CTA) in the case of *CIR vs. Shinko Electric Industries Co. Ltd.*, CTA EB No. 1180, January 4, 2016 which held, *viz*.:

> *"A representative office is a non-resident foreign corporation not engaged in any income generating business in the Philippines. As can be viewed from its licensed activities, OBtech is a representative office. Accordingly, OBtech is not subject to income tax. Hence, it is exempt from filing of the corporate income tax return."*

In reply, please be informed that your request is herein denied considering the following reasons:

1. The Decision in CTA EB Case No. 1180 has not yet attained finality.

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The doctrine of *stare decisis* applies only to rulings of the Supreme Court and not the judgments of lower courts or tribunals. Hence, the BIR is generally not bound to apply the ruling of the CTA in one particular case to a similar case unless such ruling bears the imprimatur of the Supreme Court.

2. Only foreign corporations not engaged in trade or business in the Philippines are exempt from the filing of income tax return pursuant to Section 52 (A), 1997 Tax Code, *viz*.:

> *"**Requirements**. — Every corporation subject to the tax herein imposed, **except foreign corporations not engaged in trade or business in the Philippines**, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title." (emphasis supplied)*

3. A corporation is itself a taxpaying entity and speaking generally, for purposes of income tax, corporations are classified into (a) domestic corporations and (b) foreign corporations. (Sec. 24(a) and (b), Tax Code.) Foreign corporations are further classified into (1) resident foreign corporations and (2) non-resident foreign corporations. (Sec. 24(b) (1) and (2), Tax Code.) **A resident foreign corporation is a foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein** (Sec. 84(g), Tax Code) while a non-resident foreign corporation is a foreign corporation not engaged in trade or business within the Philippines and not having any office or place of business therein. (Sec. 84(h), Tax Code) ***(N.V. Reederij "Amsterdam" and Royal Interocean Lines vs. CIR, G.R. No. L-46029, June 23, 1988)*** (emphasis supplied)

4. The above Supreme Court ruling is in conformity with Section 22 (H) & (I) of the 1997 Tax Code which provides that:

> *"**Section 22 (H)**. The term **'resident foreign corporation'** applies to a foreign corporation engaged in trade or business within the Philippines.*
>
> ***Section 22 (I)**. The term **'nonresident foreign corporation'** applies to a foreign corporation not engaged in trade or business within the Philippines."*

5. The definition of "resident foreign corporation" has not substantially changed throughout the amendments of the National Internal Revenue Code. All versions refer to "a foreign corporation engaged in trade or business within the Philippines."

Commonwealth Act No. 466, known as the National Internal Revenue Code and approved on June 15, 1939, defined "resident foreign corporation" as applying to "a foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein."

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There is no specific criterion as to what constitutes "doing" or "engaging in" or

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"transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a ***continuity of commercial dealings and arrangements***, and contemplates, to that extent, ***the performance of acts or works or the exercise of some of the functions normally incident to***, *and in progressive prosecution of commercial gain or* ***for the purpose and object of the business organization***.

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Republic Act No. 7042 or the Foreign Investments Act of 1991 also provides guidance with its definition of "doing business" with regard to foreign corporations. Section 3(d) of the law enumerates the activities that constitute doing business:

> d. ***the phrase "doing business" shall include*** soliciting orders, service contracts, **opening offices, whether called "liaison" offices or branches;"** ***(Air Canada vs. CIR, G.R. No. 169507, January 11, 2016)***

In sum, a representative office is considered a resident foreign corporation engaged in trade or business in the Philippines. It is not exempt from the filing of income tax return.

Consequently, there is no legal basis to grant your request for cancellation or exclusion of income tax in the Certificate of Registration.

Please be guided accordingly.

Very truly yours,

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

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