February 4, 2020

BIR RULING NO. OT-127-20

PD 1869; Secs. 109 & 27 of NIRC; BIR Ruling No. 1090-2018

Baniqued Layug & Bello
8/F Jollibee Center, San Miguel Avenue
Ortigas Center, Pasig City

Attention: *AAA*

BBB

CCC

Gentlemen :

This refers to your letters dated November 29, 2018 and September 4, 2019 requesting on behalf of your client, **TOTAL GAMEZONE XTREME, INCORPORATED ("TGXI,"** for brevity), for confirmation of your opinion that income derived from electronic gaming operations conducted by TGXI, as a holder of Gaming Licenses issued by the Philippine Amusement and Gaming Corporation (PAGCOR), on its different gaming sites, shall be subject to 5% franchise tax, in lieu of all kinds of taxes, pursuant to Section 13 (2) (b) of Presidential Decree ("PD") No. 1869, as amended by Republic Act ("RA") No. 9487.

It is represented that TGXI, with Tax Identification Number 000-000-000-000, is a corporation duly organized under the laws of the Philippines, the primary purpose of which is to purchase, acquire, establish, own, hold, sell, lease, conduct, operate, manage general amusement, gaming operations, and recreation enterprises of every kind and nature; to furnish amusement and recreation to the public, and other similar related business activities; to carry on any lawful activities and to do any and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes enumerated or incidental to the powers of the corporation. TGXI is a holder of various Gaming Licenses [1] for its Electronic Games operations which were issued by PAGCOR pursuant to PD No. 1869, as amended by RA No. 9487.

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In reply, please be informed that Section 13 (2) of PD No. 1869, as amended by RA No. 9487, provides, *viz.*:

> ***SEC. 13. Exemptions.*** —
>
> *(2) Income and other taxes — (a) Franchise Holder:* ***No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation, nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.*** *Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.*
>
> XXX XXX XXX
>
> *(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies,* ***shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator****. (Emphasis and underscoring supplied)*

In the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*, [2] the Supreme Court affirmed the applicability of the tax exemption provisions of PD No. 1869, as amended by RA No. 9487, to PAGCOR's licensees. Thus, the Supreme Court ruled that:

> *"As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies,* ***shall inure to the benefit of and extend to*** *corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so* ***it must be that all contractees and licensees of PAGCOR****, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.*
>
> *For the same reasons that made us conclude in the December 10, 2014*

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Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services," we find it logical that its contractees and licensees shall likewise pay corporate income tax for income derived from such "related services."

xxx xxx xxx

Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax." (Emphasis and underscoring supplied)

With regard to the VAT exemption of TGXI, Section 109 (1) (K) of the National Internal Revenue Code of 1997, as amended, provides:

SEC. 109. Exempt Transactions. — *(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:*

xxx xxx xxx

(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or ***under special laws****, except those under Presidential Decree No. 529;* (Emphasis supplied)

Thus, PAGCOR and its licensees are exempt from the payment of VAT because PAGCOR's charter, PD No. 1869, is a special law that grants the latter exemption from taxes and such exemptions extend or inure to the benefit of its licensees. [3]

Premises considered, this Office hereby rules that since TGXI is a holder of a Gaming License for its Electronic Games operations issued by PAGCOR, the exemption from taxes, fees and charges enjoyed by PAGCOR is extended to TGXI pursuant to Section 13 (2) (b) of PD No. 1869, as amended by RA No. 9487. Therefore, the income derived by TGXI solely from its Electronic Games operations, during the validity period of its Gaming Licenses on the specified gaming site, is subject only to the 5% franchise tax, and shall be exempted from corporate income tax and VAT. However, for the purpose of applying the 5% franchise tax, any income that may be realized by TGXI from related services or such services not falling under gaming operations, shall be subject to corporate income tax and VAT. [4]

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

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Very truly yours,

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

ANNEX A

Total Gamezone Xtreme, Incorporated (TGXI)
List of Gaming Sites

No.	Tax Identification No.	Registered Address/Location	Gaming License No.
1	000-000-000-000	Stall Nos. 18 & 19 Pineda Building, Mabiga, Mabalacat, Pampanga 2010	15-415
2	000-000-000-000	Ground Floor, KLD Tower Mall, National Highway, San Antonio, Biñan, Laguna 4024	15-398
3	000-000-000-000	Concordia Building, Old National Highway, Macabling, Sta. Rosa City, Laguna 4026	15-384
4	000-000-000-000	665-A McArthur Highway, Bgy. Bancal, Meycauayan, Bulacan 3020	15-066
5	000-000-000-000	Umerez Compound, Tungkong Mangga, San Jose del Monte City, Bulacan 3023	15-407
6	000-000-000-000	Morante Building, 1421 Cagayan Valley Road, Plaridel, Bulacan 3004	15-394
7	000-000-000-000	141 Bgy. Sampaloc, San Rafael, Bulacan 3008	15-340
8	000-000-000-000	Unit 5 Paseo de Carmona, Brgy. Maduya Carmona, Cavite 4116	15-071
9	000-000-000-000	Aguinaldo Highway, Brgy. Buho, Silang, Cavite 4118	15-069
10	000-000-000-000	112-C Gov. F Halili Ave., Bagbaguin Sta. Maria, Bulacan 3022	15-408
11	000-000-000-000	Total Gas Station, National Highway, Cagayan Valley Road, Bgy. Kamias, San Miguel, Bulacan	15-067
12	000-000-000-000	Silvercity En Frontera Verde E. Rodriguez, Jr. Ave., Ugong District 1, Pasig City 1604	15-418
13	000-000-000-000	2nd Floor, Don Antonio Sports Center, Holy Spirit Drive, Holy Spirit, Quezon City	15-396
14	000-000-000-000	Unit 5 Bautista Arcade Tirona Highway, Cor. Mai Samala St., Binakayan, Kawit, Cavite City 4104	15-070
15	000-000-000-000	Units 10 and 11, Cuevasville Ctr., Daang Hari Rd., Molino IV Bacoor, Cavite 4102	15-412

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16	000-000-000-000	2/F MSI Bldg. Gov. Dr., Manggahan Gen. Trias, Cavite 4107	15-391
17	000-000-000-000	716 Del Monte Avenue, Bgy. Talayan, Quezon City	15-404
18	000-000-000-000	2/F MSK Building, 241 Visayas Avenue, Tandang Sora, Quezon City	15-392
19	000-000-000-000	Ground Floor, Puregold Bldg., 419 McArthur Highway, Brgy. Dalandanan, Valenzuela City	15-386
20	000-000-000-000	2nd Floor, LB Building, 515 Paso de Blas Rd., Brgy. Paso de Blas, Valenzuela City	15-416
21	000-000-000-000	GF D'Jet Commercial Building, PH II-A, Lot C#25-2, Karangalan Vill., Brgy. Manggahan, Pasig City 1609	17-909
22	000-000-000-000	No. 172 C. Raymundo Avenue, Maybunga District 2, Pasig City 1607	15-417
23	000-000-000-000	Unit SF-206 Citigold Plaza, 175 Katipunan Avenue, Brgy. Bayanihan, Quezon City	15-035
24	000-000-000-000	National Highway, Canlalay, Biñan, Laguna 4024	15-068
25	000-000-000-000	Unit 6-B N. Lopez Ave., Lopez Vill., Brgy. San Isidro, Parañaque City 1707	15-406
26	000-000-000-000	Grace Bldg., National Rd., Cor. A. Bonifacio St., San Carlos Binangonan, Rizal 1940	15-414
27	000-000-000-000	G/F El Rancho Inn, National Highway cor. E. Rodriguez, Tunasan, Muntinlupa City	15-410
28	000-000-000-000	Ground Floor, Parkway Lane, Festival Mall, Alabang, Muntinlupa City	15-390
29	000-000-000-000	Unit 8G/F Bldg. B, Madison Square Center, Pioneer St., Buayang Bato, Mandaluyong City	15-508
30	000-000-000-000	2nd Floor Starmall, EDSA cor. Shaw Boulevard, Wack Wack, Mandaluyong City	15-388
31	000-000-000-000	Saunterfield Bldg., KM 20, Ortigas Ave. Ext., Sto. Nino, Cainta, Rizal 1900	15-022
32	000-000-000-000	Unit 3 TopMark Building, 1763 Paz M. Guazon Street, Brgy. 829, Zone 090, Paco, Manila 1007	15-400
33	000-000-000-000	M.H. Del Pilar Cor. Gov. Pascual, Tinajeros District II, Malabon City 1470	15-558
34	000-000-000-000	GD Plaza, McArthur Highway, Bgy. Ilang-Ilang, Guiguinto, Bulacan 3015	18-999
35	000-000-000-000	2/F 238 Banawe Center, Banawe Street, Manresa, Quezon City	18-1084

Footnotes

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1. Please see attached Annex "A" for the list of Gaming Licenses issued to TGXI.
2. G.R. No. 212530 dated August 10, 2016.
3. *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, G.R. No. 172087 dated March 15, 2011.
4. Section 14 (5) of PD No. 1869, as amended by RA No. 9487.

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