October 22, 2018

BIR RULING NO. 1277-18

Sections 22 (DD); 28 (6) (a); 105 of NIRC;
BIR Ruling No. 270-15; BIR Ruling No.
596-12

Hanwha Corporation
168 Golden Rock Bldg., 4F Unit 4022
Salcedo Street, Legaspi Village
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 15, 2014 requesting for the issuance of a certificate of tax exemption of Hanwha Corporation (RHQ) on its income as regional area headquarters.

From the documents submitted, it appears that Hanwha Corporation (RHQ) with Taxpayer's Identification No. 000-000-000-000, is the duly established regional or area headquarters in the Philippines of Hanwha Chemical Corporation; that Hanwha Chemical Corporation is a multinational company organized and existing under the laws of Korea and registered with the Securities and Exchange Commission (SEC) under Registration No. FM-097 dated March 6, 1995; that on July 8, 1998, Hanwha Chemical Corporation filed a petition with SEC requesting that its License No. FM-097 be amended so as to reflect the change of name from Hanwha Chemical Corporation to Hanwha Corporation; that on August 21, 1998, the SEC approved the said petition of Hanwha Chemical Corporation; that Hanwha Corporation is engaged in the manufacture, trading and distribution of industrial products and chemicals and investments worldwide and international trade with affiliates, subsidiaries or branch offices in Malaysia, Indonesia, Thailand and India; that Hanwha Corporation (RHQ), as a regional area headquarters in the Philippines of Hanwha Chemical Corporation in Korea is limited to acting as supervision, communications and coordination center for its affiliates, subsidiaries or branches of the region; and that Hanwha Corporation (RHQ) will not derive any income from sources within the Philippines and will not participate in any manner in the management of any subsidiary or branch office, Hanwha

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Chemical Corporation might have in the Philippines.

In reply, please be informed as follows:

Income Tax

Section 28 (A) (6) (a) of the Tax Code of 1997, as amended, provides that regional or area headquarters as defined in Section 22 (DD) of the said Code shall not be subject to income tax.

> Section 22 (DD) of the Tax Code of 1997, as amended, defined the term "regional or area headquarters" as "a branch established in the Philippines by multinational companies and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries or branches in the Asia-Pacific Regional and other foreign markets."

Likewise, Section 6, Chapter IV of R.A. 8756, provides that regional or area headquarters established in the Philippines by multinational companies and which headquarters do not earn or derive income from within the Philippines and do not participate in any manner in the management of any subsidiary or branch office it might have in the Philippines nor solicit or market goods and services whether on behalf of its mother company or its branches, affiliates, subsidiaries and any other company and which acts as supervisory, communications and coordinating centers for their affiliates, subsidiaries, or branches in the Asia Pacific Region and other foreign markets shall not be subject to income tax. *(BIR Ruling No. 270-15 dated August 14, 2015)*

In *BIR Ruling No. 596-2012 dated October 25, 2012*, this Office held that:

> "It must be noted that for tax purposes, a regional or area headquarters, in acting as a supervisory, communications and coordinating center for its affiliates in the region, shall not render any of the following qualifying services:
>
> - General administration and planning;
> - Business planning and coordination;
> - Sourcing/procurement of raw materials and components;
> - Corporate finance and advisory services;
> - Marketing control and sales promotion;
> - Training and personnel management;

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- Logistic services;
- Research and development services, and product development;
- Technical support and maintenance;
- Data processing and communication; and business development.

which functions are applicable to a Regional Operating Headquarters pursuant to Section 4 (b) of the Rules and Regulations implementing R.A. No. 8756."

Accordingly, Hanwha Corporation will not be subject to income tax as long as in performing its functions and in acting as a supervisory, communications and coordinating center for its affiliates in the region, it shall not render any of the foregoing qualifying services, otherwise, it shall be taxed as a Regional Operating Headquarters. *(BIR Ruling No. 596-2012 dated October 25, 2012; BIR Ruling No. 270-15 dated August 14, 2015)*

However, it should be understood that the said regional or area headquarter shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations (RR) No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the Tax Code of 1997, also as implemented by RR No. 2-98, as amended.

Value Added Tax

Section 109 (1) (J) of the Tax Code of 1997, as amended, provides that services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines shall be exempt from value-added tax. *(BIR Ruling No. 270-15 dated August 14, 2015)*

On the other hand, Section 108 of the Tax Code of 1997, as amended, provides that services rendered by VAT-registered persons to persons or entities exempt under special laws shall be subject to VAT at zero-percent (0%) rate, to wit:

"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

(A) . . .

(B) Transactions Subject to Zero Percent (0%) Rate. — The following

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services performed in the Philippines by VAT-registered persons shall be subject to zero-percent (0%) rate:

(1) . . .

(2) . . .

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is signatory effectively subjects the supply of such services to zero percent (0%) rate:

xxx xxx xxx."

In turn, Article 65 of E.O. No. 226, as amended by R.A. No. 8756, provides, *viz.*:

"Art. 65. Value-Added Tax. — The regional or area headquarters established in the Philippines by multinational companies shall be exempted from value-added tax. In addition, the sale or lease of goods and property and the rendition of services to regional or area headquarters shall be subject to zero percent (0%) VAT rate as provided for in the National Internal Revenue Code as amended."

In this case, it is clear from Article 65 of E.O. No. 226, as amended, that regional or area headquarters are exempted from VAT and that the sale or lease of goods or properties to them are subject to the zero-percent (0%) VAT rate. Such being the case and since the said Executive Order is a special law, the sale of goods and services rendered to Hanwha Corporation shall be effectively subject to the zero-percent (0%) VAT rate. *(BIR Ruling No. 270-15 dated August 14, 2015)*

It is of course understood that Hanwha Chemical Corporation/Hanwha Corporation's books of accounts and other pertinent records shall be subject to periodic examination by revenue enforcement officers of this Bureau for the purposes of ascertaining whether you have been complying with the conditions under which you have been granted tax exemption or tax incentives and your tax liability, if any, pursuant to Section 235 of the Tax Code of 1997. *(BIR Ruling No. 270-15 dated August 14, 2015)*

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.

Very truly yours,

(SGD.) CAESAR R. DULAY

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Commissioner of Internal Revenue

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