October 23, 2018

BIR RULING NO. 1299-18

Republic Act (RA) No. 9513; RA No. 9337; RA No. 7156; Revenue Regulations (RR) No. 16-2005; BIR Ruling No. 078-10

Sycip Gorres Velayo & Co.
6760 Ayala Avenue
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 17, 2015, requesting in behalf of your client, **Vivant-Malogo Hydropower, Inc. (VMHI)**, for confirmation of the following:

1. VMHI's sale of power/energy generated from its run-of-river hydropower facility shall be subject to zero percent (0%) value added tax (VAT);

2. VMHI's local purchases of goods and services for the development, construction, and installation of the power plant facilities, and the various transactions pertaining to the whole process of exploration and development of the hydroelectric source up to its conversion into power, including the services performed by contractors and subcontractors shall be subject to zero percent (0%) VAT; and

3. VMHI's importation of machinery and equipment related to its power generation activity from its hydropower facility is exempt from VAT on importation.

It is represented that VMHI, with principal address at Unit 907, Ayala Life-FGU Center, Mindanao Avenue corner Biliran Road, Cebu Business Park, Cebu City, is a domestic corporation organized and existing under the laws of the Republic of the Philippines, the primary purpose of which is to engage in the business of owning, acquiring, commissioning, operating, maintaining, evaluating, developing, constructing, holding and selling power generation facilities and related facilities, or any other business or activity that now or hereafter may be necessary, incidental, proper, advisable or

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convenient in furtherance of or otherwise relating to such purpose; that it is duly registered with the Securities and Exchange Commission (SEC) with SEC Registration No. CS201227793; that it is likewise registered with the Board of Investments (BOI) under Certificate of Registration No. 2015-052; that it is also registered with the Department of Energy (DOE) under Certificate of Registration No. HSC 2010-02-069-A dated January 20, 2015 as Renewable Energy (RE) Developer of 6MW Malugo Hydroelectric Power Plant located in the City of Silay, Negros Occidental, covered by Hydropower Energy Service Contract No. HSC 2010-02-069, made and entered into on February 02, 2010; and that the DOE, in a letter dated June 03, 2015, endorsed the entitlement of VMHI to zero percent (0%) VAT on its purchase of local goods, properties, and services needed for the development, construction, and installation of its plant facilities.

In reply thereto, please be informed that Section 15 (g) of RA No. 9513, otherwise known as the "Renewable Energy Act of 2008," provides, to wit:

> *"SEC. 15. Incentives for Renewable Energy Projects and Activities. — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:*
>
> xxx xxx xxx
>
> *(g) Zero Percent Value-Added Tax Rate. — The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.*
>
> *All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.*
>
> *This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors."*

Clearly, under RA No. 9513, the sale of fuel or power generated from renewable sources of energy such as but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 9337.

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Also, RA No. 9513 intended to exclude RE Developers from the coverage of the 12% VAT on their local purchases of goods and services needed for the development, construction and installation of their power plant facilities. Under said law, the local purchases of goods and services by RE Developers are subject to zero percent (0%) VAT provided that they are needed for the development, construction and installation of their power plant facilities. This is one of the fiscal incentives given by the government to encourage RE Developers including contractors and subcontractors to develop and utilize the renewable energy resources in the country.

Accordingly, VMHI's sale of power/energy generated from its run-of-river hydropower facility shall be subject to zero percent (0%) VAT and the suppliers/sellers of goods and services of VMHI, it being a RE Developer, should not pass on 12% VAT to its purchases of goods and services that will be used by VMHI in its development, construction and installation of the 6MW Malugo Hydroelectric Power Plant, located in the City of Silay, Negros Occidental. *(BIR Ruling No. 078-2010 dated September 23, 2010)*

Furthermore, Section 10 (2) of RA No. 7156, also known as the "Mini-hydroelectric Power Incentive Act," states that:

> "*Section 10. Tax Incentives. — Any person, natural or judicial, authorized to engage in mini-hydroelectric power development shall be granted the following tax incentives or privileges:*
>
> xxx xxx xxx
>
> *(2) Tax and Duty-free Importation of Machinery, Equipment and Materials. — Within seven (7) years from the date of award, importation of machinery and equipment, materials and parts shipped with such machinery and equipment including control and communication equipment shall not be subject to tariff duties and value-added tax: provided, that the said machinery, equipment, materials and parts: (a) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (b) are directly and actually needed and will be used exclusively in the construction and impounding of water, transformation into energy, and transmission of electric energy to the point of use; and (c) are covered by shipping documents in the name of the duly registered developer to whom the shipment will be directly delivered by customs authorities: provided, further, that prior approval of the OEA was obtained before the importation of such machinery, equipment, materials and parts was made;*
>
> xxx xxx xxx"

In relation thereto, Section 4 (2), (3), and (4) of RA No. 7156 provides that:

> "*Section 4. Definition of Terms. — As used in this Act, the following terms shall be understood, applied and construed as follows:*

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xxx xxx xxx

(2) "Mini-hydroelectric power plant" shall refer to an electric-power-generating plant which: (a) utilizes the kinetic energy of falling or running water (run-of-river hydro plants) to turn a turbine generator producing electricity; and (c) has an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(3) "Mini-hydroelectric power development" shall refer to the construction and installation of a hydroelectric-power-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(4) "Mini-hydroelectric power developer" or "developer" shall refer to any individual, cooperative, corporation or association engaged in the construction and installation of a hydroelectric-power-generating plant with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

xxx xxx xxx"

Based on the foregoing provisions of RA No. 7156, VMHI, as developer of the 6MW (6,000 kilowatts) Malugo Hydroelectric Power Plant, located in the City of Silay, Negros Occidental, shall be exempted from the payment of VAT on the importations of all machinery and equipment including control and communication equipment, within a period of seven (7) years from the date of awarding the contract (February 02, 2010), provided, that:

(a) the machinery, equipment, materials and parts are not manufactured domestically in reasonable quantity and quality at reasonable prices;

(b) the machinery, equipment, materials and parts are directly and actually needed and will be used exclusively in the construction and impounding of water, transformation into energy, and transmission of electric energy to the point of use;

(c) the machinery, equipment, materials and parts are covered by shipping documents in the name of VMHI to whom the shipment will be directly delivered by customs authorities; and

(d) prior approval of the Office of Energy Affairs (now Department of Energy) must be obtained before the importation of such machinery, equipment, materials and parts.

It must be emphasized, however, that the zero-percent (0%) VAT on local purchases of goods and services and the exemption from the payment of VAT on the importations of all machinery and equipment including control and communication equipment, shall be limited only to VMHI's local purchases and importations that will be used by VMHI in its development, construction and installation of the 6MW Malugo

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Hydroelectric Power Plant located in the City of Silay, Negros Occidental. Likewise, the grant of VAT zero-rating on local purchases and exemption from the payment of VAT on importations are always subject to post audit verification by the Bureau of Internal Revenue (BIR) whether the purchased goods/services and importations were indeed utilized in the development, construction and installation of the 6MW Malugo Hydroelectric Power Plant. Finally, the processing of the application for VAT zero-rated transactions shall be done pursuant to Revenue Memorandum Order (RMO) No. 7-2006, in relation to Revenue Regulations (RR) No. 16-2005, as amended.

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,

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

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