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

Sec. 108(B)(2); RR 4-2007
BIR Ruling No. 413-12; VAT Ruling No. 010-05; VAT Ruling No. 018-05
#134-2018
2-8-2018

ENDEC, INC.
Unit 610 Cattleya Building
235 Salcedo Street
Legaspi Village, Makati City

Attention: **Mr. William M. Johnson**
CEO

Gentlemen:

This refers to your letter dated November 29, 2017 requesting for confirmation of your opinion that: (1) the consultancy services rendered in the Philippines by Endec, Inc. ("Endec"), a domestic corporation and a VAT-registered taxpayer, in favor of Black and Veatch Special Projects Corp. ("BVSPC" for brevity), a corporation organized under the laws of the state of Missouri, U.S.A and a foreign corporation not engaged in trade or business in the Philippines, is subject to VAT at zero percent (0%) rate pursuant to Section 108(B)(2) of the Tax Code of 1997 ("Tax Code"), as amended, and (2) that Endec is entitled to apply for the refund of any excess or unutilized input VAT due or paid attributable to its zero-rated sale of services to BVSPC, subject to the conditions provided in Section 112(A) of the same Code.

It is represented that in 2008, BVSPC entered into a Prime Agreement with the Defense Threat Reduction Agency ("DTRA"), an agency attached to the United States Department of Defense, to implement the Biological Threat Reduction Integrating Contract ("BTRIC"). In execution of the Prime Agreement, BVSPC and DTRA further entered into a Task Order Agreement in September 2016 particularly to implement the BTRIC in the Philippines. In turn, under the Agreement dated as of September 30, 2016, BVSPC, as prime contractor under the BTRIC engaged the services of Endec as consultant to perform consultancy services in the areas of planning, organization, management, logistics, training, sustainment support, technical expertise, advisory on host nation laws and regulations, standards evaluation, studies and reports, among others (the "Consultancy Agreement"). It is specifically provided in the Consultancy Agreement that Endec, as consultant, "shall assist BVSPC (prime contractor) in support of Donor's (DTRA's) BTRIC Program in the Philippines".

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The Consultancy Agreement further states that in consideration of the various consultancy services to be rendered by Endec to BVSPC for the purpose of assisting in the implementation of BTRIC in the Philippines, BVSPC shall pay Endec compensation in United States dollars (US$) in such amounts stated in the Consultancy Agreement. The agreement specifically requires Endec to invoice BVSPC in US$.

In support of your request, you have submitted the following documents, to wit:

1. BIR Certificate of Registration dated August 30, 2000 showing that Endec is a VAT-registered entity;
2. Notarized contract between BVSPC and Endec, Inc. dated September 30, 2016;
3. Judicial affidavit of Endec Secretary attesting that the services under the Consultancy Agreement were rendered to a non-resident foreign corporation and that such services were performed in the Philippines;
4. Certificate of Non-Registration of Company issued by the Securities and Exchange Commission (SEC) that BVSPC does not appear in the records of the SEC to be registered as a corporation or partnership in the Philippines;
5. SEC Certificate of Registration of Endec;
6. Articles of Incorporation and By-Laws of BVSPC (as amended) showing that BVSPS is a corporation duly incorporated under the laws of the State of Missouri, U.S.A. and a Certificate of the Executive Vice President and Secretary of BVSPC attesting that BVSPC is a corporation registered in accordance with the laws of the United States and that it has no permanent establishment in the Philippines, duly authenticated by the Philippine Consulate/Consular Office/Embassy located at Washington D.C., United States; and
7. Copies of VAT zero-rated Sales Invoices and Official Receipts issued by Endec to BVSPC.

In reply thereto, please be informed that Section 108(B)(2) of the Tax Code, as implemented by Section 4.108-5(b)(2) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007 states that —

> "(B) Transactions subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) xxx xxx xxx;
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration

for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;

XXX XXX XXX"

Applying the afore-cited provisions of law to the case under consideration, this Office holds that the consultancy services rendered by Endec to BVSPC which are paid for in acceptable foreign currency will qualify for VAT zero-rating pursuant to Section 108(B)(2) of the Tax Code of 1997, as implemented by Section 4.108-5(b)(2) of Revenue Regulations No. 16-2005, as amended by RR 4-2007. Provided, that the same is remitted inwardly and accounted for in accordance with the rules and regulations of the BSP. *(BIR Ruling No. 413-12 dated June 15, 2012)*

Furthermore, considering that the consultancy services rendered by Endec to BVSPC qualify for VAT zero-rating, Endec is likewise entitled to apply for the refund of any excess or unutilized input VAT due or paid attributable to its zero-rated sale of services to BVSPC, subject to the conditions provided in Section 1-12(A) of the Tax Code, as implemented by Section 19 of RR 4-2007. *(VAT Ruling No. dated September 13, 2005)*

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

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