November 15, 2018

BIR RULING NO. 1347-18

RA 7916; RR No. 2-98; BIR Ruling No. 291-12

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

Attention: *AAA*

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Gentlemen :

This refers to your letter dated June 30, 2016, requesting on behalf of Seven Seas Resorts and Leisure, Inc. ("SSRLI" or "the Company"), for confirmation that SSRLI's income derived from the sale of real property to Heimisla Corporation is (a) subject to 5% Gross Income Tax; and (b) exempt from creditable withholding tax on account of SSRLI's registration with the Philippine Economic Zone Authority (PEZA) under Republic Act (RA) No. 7916, otherwise known as the "Special Economic Zone Act of 1995."

It is represented that SSRLI, with Tax Identification Number (TIN) 000-000-000, is a corporation organized and existing under the laws of the Philippines to engage in hotel business; that its business address is at Pamalican Island Economic Tourism Zone, Cuyo, Palawan; that it is a PEZA-registered Ecozone Developer/Operator of Pamalican Island Tourism Ecozone based on its Certificate of Registration No. EZ 07-01 issued by PEZA on January 9, 2007; that Article I (1) of its Registration Agreement with PEZA provides that SSRLI's registration as an Ecozone Developer/Operator shall entitle it to establish, develop, construct, administer, manage and operate a Special Economic Zone to be known as Pamalican Island Tourism Ecozone; that SSRLI is allowed to lease, sell, assign, mortgage, transfer, or otherwise encumber the area designated as Tourism Economic Zone or any right or interest therein, provided that the sale, transfer, assignment, or lease of area within the Ecozone shall be made only in favor of entities who are registered with PEZA pursuant to RA No. 7916.

It is further represented that on June 15, 2016, SSRLI executed a Deed of Absolute Sale over a parcel of land with villa cluster constructed thereon, covered by Transfer Certificate of Title (TCT) No. 065-2015000973, located at Pamalican Island, Brgy. Manamok, Cuyo, Palawan, in favor of Heimisla Corporation, also a PEZA-registered

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Tourism Economic Zone Enterprise engaged in hotel and restaurant operations, particularly the establishment of Heimisla Resort Villa, as evidenced by its PEZA Certificate of Registration No. 16-057 issued on March 23, 2016.

On the basis of the foregoing facts, you now request for confirmation that the above sale of parcel of land by SSRLI in favor of Heimisla Corporation is (a) subject to 5% Gross Income Tax; and (b) exempt from creditable withholding tax.

In reply, please be informed that PEZA-registered enterprises are exempt from paying all local and national taxes and, in lieu thereof, are only subject to the 5% special tax on gross income, to be distributed in accordance with Section 24 of RA No. 7916, to wit:

> "**SEC. 24. Exemption from National and Local Taxes.** — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.
>
> xxx xxx xxx"

Relative to the above-provision, Section 2.57.5 (B) (2) of Revenue Regulations (RR) No. 2-98 as amended, provides:

> "SECTION 2.57.5. Exemption from Withholding. — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx xxx
>
> (2) Corporations registered with the Board of Investments, **Philippine Export Processing Zones** and Subic Bay Metropolitan Authority enjoying exemption from the income tax pursuant to EO 226, as amended, **Republic Act No. 7916** and the Omnibus Investments Code of 1987 and RA 7227, as amended, respectively;" (Underscoring supplied)

Based on the foregoing, it is clear that SSRLI is subject only to the 5% gross income tax on the sale of the above parcel of land in favor of Heimisla Corporation in

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accordance with Section 24 of RA No. 7916. Moreover, since SSRLI is an enterprise enjoying exemption from the payment of income tax pursuant to RA No. 7916, its income from the aforesaid sale shall not be subject to the creditable withholding tax prescribed under RR No. 2-98, as amended. (*BIR Ruling No. 291-2012* dated April 25, 2012)

Pursuant to Section 4 of Republic Act (RA) No. 10708, [1] SSRLI is required to file its tax returns and pay its tax liabilities, on or before the deadline as provided under the 1997 Tax Code, as amended, using the electronic system for filing and payment of taxes of the BIR. Furthermore, it shall file with PEZA a complete annual tax incentives report of its income-based tax incentives, VAT and duty exemptions, deductions, credits or exclusions from the tax base, as may be provided under RA No. 7916, within the periods prescribed under RA No. 10708's Implementing Rules and Regulations and Joint Memorandum Circular No. 1-2016 dated September 1, 2016.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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

Footnotes

1. An Act Enhancing Transparency in the Management and Accounting of Tax Incentives Administered by Investment Promotion Agencies.

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