November 15, 2018

BIR RULING NO. 1351-18

R.A. 7916; BIR Ruling No. 014-12

Punongbayan & Araullo
20th Floor, Tower I, The Enterprise Center
6766 Ayala Avenue, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 26, 2012 requesting on behalf of your client, **QUALFON PHILIPPINES, INC.** (referred herein as **"Qualfon"**), for confirmation of your opinion that the following direct costs and expenses are deductible for purposes of computing the gross income subject to the 5% gross income tax (GIT) pursuant to the provisions of Republic Act (R.A.) No. 7916:

1. Salaries and employee benefits related to operations;
2. Utility charges such as electricity, water, and communication expenses mainly used in operations;
3. Depreciation of computers used in operations; and
4. Rental expense for the building.

In addition, you would also like to request for confirmation that the following expenses are non-deductible in computing the gross income subject to the 5% GIT:

1. Advertising expenses; and
2. Salaries and employee benefits for administrative personnel.

It is represented that **Qualfon** is a corporation duly organized and existing under the laws of the Philippines with principal office address at the 9th Floor, Skyrise Building 3, Asiatown IT Park, Apas, Cebu City, and with branch office located at Eros Building corner Real and Dr. V. Locsin Streets, Dumaguete City; that it is primarily engaged in the business of operating a call center enterprise, providing inbound and outbound teleservices for foreign companies in different languages, such as customer care, help

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desk, telesales and collections with live agents or automated response; that it is registered with the Philippine Economic Zone Authority (PEZA) as an ECOZONE Information Technology (IT) Enterprise to engage in the following registered activities: (1) set-up an IT-enabled facility to provide customer contact center services; (2) provide inbound and outbound calls support service (expansion project); (3) customer interaction services in Dumaguete City; and (4) increase in volume and capacity in its customer contact center.

It is further represented that as an ECOZONE IT Enterprise, **Qualfon** was granted by PEZA with four (4) years income tax holiday (ITH) incentive from the start of its commercial operations in Cebu City on June 1, 2006 to May 31, 2010, and extended from June 1, 2011 to May 31, 2012. Starting June 1, 2012, **Qualfon's** Cebu operation would be subject to the 5% GIT which is in lieu of all national and local taxes; that **Qualfon** established a branch in Dumaguete City which started commercial operations on June 1, 2010 and still covered by ITH incentive from June 1, 2010 to May 31, 2014.

In reply, please be informed that Section 24 of R.A. 7916, otherwise known as the Special Economic Zone Act of 1995, provides that PEZA-registered enterprises shall be subject to the 5% preferential tax rate on gross income in lieu of all taxes, national and local. Gross income, pursuant to Section 2 (nn), Rule 1 of the Implementing Rules and Regulations (IRR) of R.A. 7916, is defined as follows:

> 'Gross income' for purposes of computing the special tax due under Section 24 of the Act refers to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus costs of sales or direct costs but before any deduction for administrative expenses or incidental losses during a given taxable period. The allowable deductions from 'gross income' are specifically enumerated under Section 2, Rule XX of these Rules.

The foregoing definition is reduced to the following formula:

Gross Ecozone Sales or Revenues
Less: Sales Discounts
Sales Returns
Direct Costs (Cost of Sales)
Gross Income
Less: Allowable Deductions
Taxable Gross Income (Subject to 5% final tax)

Corollarily, Section 2, Rule XX of the PEZA IRR, on the other hand, provides for the following *allowable deductions* of ecozone export enterprises:

> "SECTION 2. Gross Income Earned; Allowable Deductions. — For purposes of these Rules, gross income earned shall be, as defined in Section 2 (nn), Rule I of these Rules, subject to the following allowable deductions for specific types of

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enterprises:

1. ECOZONE Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises

   — Direct salaries, wages or labor expenses

   — Production supervision salaries

   — Raw materials used in the manufacture of products

   — Goods in process (intermediate goods)

   — Finished goods

   — Supplies and fuels used in production

   — Depreciation of machinery and equipment used in production, and buildings owned and/or constructed by an ECOZONE Enterprise

   — Rent and utility charges associated with buildings, equipment and warehouses, or handling of goods

   — Financing charges associated with fixed assets

2. ECOZONE Developer/Operator, Facilities, Utilities and Tourism Enterprises

   — Direct salaries, wages or labor expenses

   — Service supervision salaries

   — Direct materials, supplies used or resold to another Ecozone Enterprise

   — Depreciation of machinery, equipment and buildings owned and/or constructed

   — Financing charges associated with fixed assets

   — Rent and utility charges associated with buildings and capital equipment"

xxx xxx xxx

The above-mentioned enumerations are exclusive. Thus, under the maxim *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect (*Tolentino v. Paqueo*, 523 SCRA 377). In the same vein, where the terms are expressly limited to certain matters, it may not by interpretation or construction

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be extended to other matters (*Sarmiento III v. Mison*, 156 SCRA 549). The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned (*Romualdez v. Marcelo*, 497 SCRA 89). *(BIR Ruling No. 014-12 dated January 4, 2012)*

Revenue Regulations (RR) No. 11-2005 further clarified Section 2, Rule XX of the PEZA IRR by enumerating certain direct costs/expenses deductible from gross income for purposes of determining the taxable base of Ecozone Export Enterprise, Free Trade Enterprises and Domestic Market Enterprises, to wit:

a. Direct salaries, wages or labor expenses;

b. Production supervision salaries;

c. Raw materials used in the manufacture of products;

d. Decrease in Goods in Process Account (Intermediate Goods);

e. Decrease in Finished Goods Account;

f. Supplies and fuels used in production;

g. Depreciation of machinery and equipment used in production, and of that portion of the building owned or constructed that is used exclusively in the production of goods;

h. Rent and utility charges associated with building, equipment and warehouses used in production; and

i. Financing charges associated with fixed assets used in production the amount of which were not previously capitalized.

It is to be emphasized that ECOZONE Enterprises are not necessarily manufacturer-exporters of products considering that there are also service enterprises registered as ECOZONE Enterprises. With the Philippines becoming the favorite investment destination of information technology (IT) and business process outsourcing (BPO) companies, Ecozone Export Enterprises are not limited to manufacturer-exporters of products but also including IT and BPO companies. In fact, the contribution of the BPO industry to the Philippine economy is very significant and the government is determined to sustain its growth. To date, no separate set of deductions had been prescribed for these service-oriented companies. Thus, the direct costs and expenses incurred in connection with the performance of the services provided by these type of PEZA-registered enterprises are equally deductible for purposes of the 5% special tax in the same manner that raw materials and supplies used in production by PEZA-registered enterprises undertaking manufacturing activities are allowed as deductible expenses.

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Accordingly, this Office hereby confirms that advertising expenses and salaries and employee benefits for administrative personnel are NOT DEDUCTIBLE from gross revenues for purposes of computing its taxable income under the 5% preferential tax rate based on the gross income earned.

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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