November 15, 2018

BIR RULING NO. 1357-18

RA 9520; RR 006-2012, 007-08; 000-00

Highland Miners Marketing Cooperative
Rm. 303 Rudel Bldg.
V. Lower Mabini cor. Diego Silang, Baguio City

Attention: *AAA*

Gentlemen :

This refers to your letter dated March 23, 2012 duly indorsed by Revenue Region (RR) No. 2-Baguio City, requesting for a clarification on the taxation on the sale of Gold made by Cooperatives with Bangko Sentral ng Pilipinas (BSP) on the basis of Revenue Regulations (RR) No. 7-2008.

Documents submitted disclosed that Highland Miners Marketing Cooperative (HMMC) with Tax Identification Number 000-000-000-000 is a primary marketing cooperative duly organized under the laws of the Philippines; that it is registered with the Cooperative Development (CDA) under Registration No. 9520-15020180 dated August 15, 2011; and that the purposes for which it was formed are the following:

1) Marketing the gold production of member small-scale miners

2) Providing savings mechanism to members by encouraging them to invest their savings

3) To make temporary investment in time deposits or other forms of investment

and that on September 5, 2011, HMMC obtained a certificate of tax exemption (CTE) from Revenue Region (RR) No. 2-Baguio City as a cooperative transacting with members only with CTE No. COOP-00124-11-RR-02-RDO-08, thus entitled to the following tax exemptions and incentives provided by Article 60 of Republic Act No. 9520, as implemented by Section 7 of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520:

1. Exemption from Income tax on income from CDA-registered

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operations;

2. Exemption from Value-Added Tax on CDA-registered sales or transactions;

3. Exemption from other Percentage tax;

4. Exemption from Donor's tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the cooperative;

5. Exemption from Excise tax for which it is directly liable;

6. Exemption from Documentary stamp tax: *Provided, however*, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax;

7. Exemption from payment of Annual Registration fee of Five hundred pesos (P500.00);

8. Exemption from all taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system.

In reply, please be informed that pursuant to Section (Sec.) 3 of Revenue Regulations (RR) No. 006-2012 entitled *"Taxation on the Sale of Gold and Other Metallic Minerals to Bangko Sentral ng Pilipinas and Other Persons or Entities, Amending Revenue Regulations No. 7-2008, and Further Amending Section 2.57.2 (T) of Revenue Regulations No. 2-98, as Amended" dated April 2, 2012, provides that:*

SECTION 3. Duties and Obligations (Payment of Taxes). —

(a) Excise Tax. — Metallic minerals are subject to the two percent (2%) excise tax rate based on either the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced; or the value used by the Bureau of Customs in computing tariff and duties, in case of importations. Possessors of said metallic minerals must be able to show proof that the excise tax has been paid thereon, otherwise, they shall be assessed and be held liable for the payment thereof. Metallic minerals discovered in the possession of persons who cannot show proof of payment of excise taxes thereon are presumed to have been removed on the day of discovery. Further, for purposes of this Regulations, possession shall mean, not only the actual, current physical possession of said metallic minerals, but shall likewise cover the inclusion of said minerals in the inventory of a person or entity at any given point in time.

(b) Value-Added Tax. — Sales of metallic minerals to persons and entities, except

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sale of gold to the Bangko Sentral ng Pilipinas, is subject to twelve percent (12%) Value-Added Tax if the value thereof exceeds the threshold set by the 1997 NIRC and existing issuances.

Sales of gold to the Bangko Sentral ng Pilipinas is subject to Value-Added Tax at the rate of zero percent (0%) as prescribed under Section 106 (A) (2) (a) (4) of the 1997 NIRC, if the seller is a VAT registered taxpayer.

(c) Income Tax. — Sellers are subject to income tax at the rate prescribed under Section 24 (A) in case of individual taxpayers, and under Section 27 (A) of the 1997 NIRC in the case of corporations. Further, buyers of said metallic minerals are required to withhold five percent (5%) of gross payments made and remit the same to the Government.

Section 2.57.2 (T) of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 17-2003, is hereby further amended as follows:

"(T) Income payments on purchases of minerals, mineral products and quarry resources as defined and discussed in Section 151 of the Code. — Income payments on purchases of minerals, mineral products and quarry resources, such as but not limited to silver, gold, marble, granite, sand, boulders and other materials/products — Five percent (5%)."

In order for a seller/possessor of said metallic mineral to be able to claim the costs of said metallic mineral, said seller/possessor must be able to show proof of withholding and remittance of the five percent (5%) withholding tax on said product, otherwise all claimed costs and expenses associated therewith shall be disallowed.

However, Article 60 of Republic Act (RA) No. 9520 entitled "AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008" provides as follows:

ART. 60. Tax Treatment of Cooperative. — Duly registered cooperatives under this Code which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. x x x

xxx xxx xxx

In addition, the Joint Rules and Regulations implementing RA No. 9520, particularly Sections 4, 7 and 9 as circularized by Revenue Memorandum Circular (RMC) No. 12-10 dated February 5, 2010, provides:

Section 4. *Types of Cooperatives. — Cooperatives may fall under any of the following types:*

(a) x x x

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xxx xxx xxx

(d) Marketing Cooperative is one which engages in the supply of production inputs to members and markets their products;

xxx xxx xxx

Section 7. *TAX EXEMPTIONS OF DULY REGISTERED COOPERATIVES WHICH TRANSACT BUSINESS WITH MEMBERS ONLY. — Duly registered cooperatives dealing/transacting business with members only shall be exempt from paying any taxes and fees, including but not limited to:*

a) Income Tax imposed by Title II of the NIRC, as amended;

b) Value-Added Tax (VAT) imposed under Title IV of the NIRC, as amended;

c) Percentage Tax imposed under Title V of the NIRC, as amended;

d) Donor's Tax imposed under Title III of the NIRC, as amended, on donations to duly accredited charitable research and educational institutions and reinvestment to socio-economic projects within the area of operation of the cooperatives;

e) Excise Tax under Title VI of the NIRC, as amended, for which it is directly liable;

f) Documentary Stamp Tax imposed under Title VII of the NIRC, as amended, provided, however, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax;

g) Annual Registration Fee of P500.00 under Section 236(B) of the NIRC, as amended;

h) All taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% final income tax on interest income derived from a depository bank under the expanded foreign currency deposit system; and

i) Electric cooperatives duly registered with the Authority shall be exempt from VAT on revenues on systems loss and VAT on revenues on distribution, supply, metering and lifeline subsidy of electricity to their members.

xxx xxx xxx

"SECTION 9. Taxability of Unrelated Income of Cooperative. —

Notwithstanding the foregoing, all income of cooperatives not related to the main/principal business/es under its Articles of Cooperation shall be subject to all the appropriate taxes under the NIRC, as amended. This is applicable to all types of cooperatives whether dealing purely with members or both members and non-members.

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As represented, HMMC claims that it buys and sells gold. To be qualified for the incentives under Cooperative Code, it should transact with its members only. In fact, it represented to the BIR that it is transacting with members only when it was issued CTE No. COOP-00124-11-RR-02-RDO-08. As a gold trader/dealer engaged in the buying and selling of gold, it is highly unlikely that HMMC transacts with MEMBERS ONLY, thus, when HMMC transacts with an individual or enterprise (such as BSP) which is not a member of the cooperative, then the cooperative shall not be considered to be transacting with members only. The act removes it from its classification as "transacting with members only." It is then subject to appropriate taxes as stated under Sec. 8 of the Joint Rules and Regulations.

Moreover, Sec. 3 (b) of RR 7-08 states that:

> *b) Qualification under the Program —*
>
> *R.A. No. 7076 requires person/s undertaking small scale mining activities to register with the Board and may organize themselves into a cooperative in order to qualify for the awarding of people's small scale mining contract.*
>
> *The law defines small miners as Filipino citizens who, individually or in tandem with others, voluntarily form a cooperative, duly licensed by the Department of Environment and Natural Resources, to engage in the extraction or removal of minerals or ore-bearing materials from the ground.*

Thus, to be qualified for an award of a small scale mining contract, a group of individuals must constitute themselves as a cooperative to undertake mining activities.

Further, Sec. 4 of RR 7-08 states that:

> *SECTION 4. Duties and Obligations (Payment of Taxes). —*
>
> *Section 13 (d) of R.A. No. 7076 amending Section 4 of P.D. 1899 defines the duties and obligations of the holder of a small-scale mining contract, and one of which is to "[p]ay all taxes, royalties or government production share as are now or as may hereafter be provided by law."*
>
> *In relation thereto and consistent with the provisions of the Tax Code of 1997, as amended, a holder of small-scale mining contract is liable to pay the following national internal revenue taxes.*

Based on the foregoing, the sale therefore of gold by HMMC to BSP, which is not member of a cooperative, is subject to the payment of income tax, excise tax and VAT and consequently to withholding tax.

Very truly yours,

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

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