November 19, 2019

BIR RULING NO. 1395-18

RA 8756; Sec. 28 (A) (6) (a) NIRC; BIR Ruling No. 110-13

Developmentex Asia RHQ
1901 Orient Square Building
Emerald Avenue, Ortigas, Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 19, 2014 requesting for the tax status of Developmentex Asia RHQ as a regional or area headquarters.

It is represented that Developmentex Asia RHQ, with Taxpayer's Identification No. 000-000-000, is the duly established regional or area headquarters in the Philippines of Developmentex.com, Incorporated, a foreign company organized and existing under the laws of the United States of America (USA) and is engaged in the business of "career networking service in the field of international development and international trade with affiliates, subsidiaries, or branch offices in the Asia-Pacific Region; that Developmentex.com, Incorporated was registered with the Securities and Exchange Commission (SEC) under Registration No. FS201413909 dated July 25, 2014 and was duly licensed to establish its regional or area headquarters in the Philippines under the name, Developmentex Asia RHQ; that Developmentex Asia RHQ, as a regional or area headquarters in the Philippines of Developmentex.com, Incorporated, is limited to acting as supervisory, communications and coordinating center for Developmentex.com, Incorporated's affiliates, subsidiaries, or branches in the region; and that Developmentex Asia RHQ shall not derive any income from sources within the Philippines and shall not participate in any manner in the management of any subsidiary or branch office which Developmentex.com, Incorporated might have in the Philippines.

In reply, please be informed as follows:

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Income Tax

Section 22 (DD) of the 1997 Tax Code, as amended, provides, *viz.*:

"SEC. 22. Definitions. — When used in this Title:

xxx xxx xxx

(DD) The term 'regional or area headquarters' shall mean a branch established in the Philippines by multinational companies and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets."

Further, Section 28 (6) (a) of the 1997 Tax Code, as amended, states:

"SEC. 28. Rates of Income Tax on Foreign Corporations. —

(6) Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies. —

(a) Regional or area headquarters as defined in Section 22(DD) shall not be subject to income tax."

Based on the foregoing, this Office is of the opinion and so holds that Developmentex Asia RHQ falls within the purview of a regional or area headquarters contemplated under the above cited provision. Accordingly, as long as Developmentex Asia RHQ will not engage in any income generating activity, it shall not be subject to income tax pursuant to Section 28 (6) (a) of the 1997 Tax Code, as amended. (*BIR Ruling No. 110-13* dated March 21, 2013)

Likewise, Developmentex Asia RHQ will not be subject to branch profits remittance tax (BPRT) on the presumption that it will not derive any income from sources within the Philippines and thus, there will be no profit to speak of that will be remitted to its head office abroad. In other words, once Developmentex Asia RHQ engages in income generating activities and remits profits to its head office abroad, said profits remittance shall be subject to the BPRT pursuant to Section 28 (A) (5) of the 1997 Tax Code, as amended.

It should be understood that Developmentex Asia RHQ shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations (Rev. Regs.) No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (B) of the Tax Code of 1997, also

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as implemented by Rev. Regs. No. 2-98, as amended.

Value Added Tax

Furthermore, pursuant to paragraph (E) Section 14 the Rules and Regulations implementing Republic Act No. 8756, amending Executive Order No. 226, otherwise known as the Omnibus Investments Code, provides that:

> *"Section 14. Value-Added Tax. — Regional or area headquarters shall be exempted from the value-added tax. The sale or lease of goods and property and the rendition of services to regional or area headquarters shall be subject to zero percent (0%) VAT rate as provided for in the National Internal Revenue Code, as amended."*

A person is subject to VAT if it renders service "in the course of trade or business" (Section 105, 1997 Tax Code). The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. Hence, as long as Developmentex Asia RHQ will merely act as communications and coordinating center for Developmentex.com, Incorporated's affiliates, subsidiaries, or branch offices in the country, and will not engage in any income-generating activity in the Philippines, it shall be exempt from the payment of VAT.

Moreover, since Developmentex Asia RHQ has been granted tax exemption privileges based on its status as a regional or area headquarters by the Board of Investments, any sale to it shall be subject to zero percent-rate (0%) VAT pursuant to paragraph (E) Section 14 the Rules and Regulations implementing Republic Act No. 8756. (*BIR Ruling No. 110-13* dated March 21, 2013)

It is of course understood that Developmentex Asia RHQ's books of accounts and other pertinent records shall be subject to periodic examination by revenue enforcement officers of this Bureau for the purposes of ascertaining whether it has been complying with the conditions under which it has been granted tax exemption or tax incentives and its tax liability, if any, pursuant to Section 235 of the Tax Code of 1997.

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 as null and void.

Very truly yours,

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

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