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

Republic Act (RA) No. 9369; Revenue Regulations (RR) No. 16-2005
BIR Ruling No. 139-2016; BIR Ruling No. 390-2015
#016-2018
1-17-2018

TOPBEST PRINTING CORPORATION
197 Ma. Clara St., Bet. 9th & 10th Ave.,
Grace Park, Kalookan City 1403

Attention: CRISTINA C. CO
Finance Manager

Gentlemen:

This refers to your letter dated July 10, 2017, requesting for clarification on the tax withheld from Topbest Printing Corporation ("Topbest" for brevity) by the Commission on Elections (COMELEC), for goods and supplies you provided in connection with the May 09, 2016 National and Local Elections.

Background:

Topbest is duly registered Filipino Corporation. It has been participating and has joined several public biddings with the COMELEC for the past elections, and has been fortunate to have won several projects for the supply and delivery of various election supplies and printing services with the said government agency. In the May 2013 Automated Midterm Elections, it won the bidding in the Supply and Delivery of bottles of Indelible Ink, in the amount of Php , of which of the corresponding 5% withholding tax on sale, and an additional 1% Expanded Withholding tax (EWT) were deducted, and the same tax rates were also used in other successful biddings, pursuant to Section 114 (c) of the National Internal Revenue Code of 1997, as amended.

For the 2016 Automated Elections, TOPBEST won the following supply and delivery of Election supplies:

Election Supplies	Amount
(a) 1,202,820 pieces of Ballot Secretary Folders (B/S No. (b) 400,940 Bottles of Indelible Stain Ink (B/S No.	Php
(c) 6,000 Rolls Stretch Film (B/S No.) and 4,510 Rolls Stretch Film (B/S No.)	Php Php
(d) 100,235 pcs. of CEF-A3 (Poster Indicating Precinct), 100,235 pcs. of CEF-A11 (Minutes of Final Testing and Sealing), 380,000 pcs. of CEF-A12-A (Paper Seal for Books of Voters), 5,212,220 pcs. of CEF-A12 (Paper Seal). (B/S No. and	Php

You were expecting that the usual tax rate of 5% withholding tax and the 1% EWT will be deducted, but you were surprised to see that the full 12% value added tax (VAT), or an additional 7% was deducted from your billing statements. You have written several requests to

the COMELEC for the refund of the 7% VAT previously withheld but up to this date, you have not yet received any affirmation or denial of your request.

Last February, 2017, you were able to get a copy of COMELEC Minute Resolution No. promulgated on August 11, 2016, where the COMELEC ruled to adopt the recommendation of Commissioner Christian Robert S. Lim to RELEASE the 7% final VAT previously withheld from earlier payments to Smartmatic-TIM Corporation for the supply and delivery of Automated Election System used in May 09, 2016 automated elections, with the condition that Smartmatic will rebate to the Commission the equivalent amount should there be a case filed on the VAT ruling. The said enactment was based on BIR Ruling 139-2016 which categorically declared that payments relating to the May 09, 2016 automated elections are exempt from the 5% final withholding tax, and clarifying that such exemption shall mean the COMELEC will no longer remit to the government (BIR) the 5% final withholding tax, and the savings of the agency.

In view of the foregoing, you now seek clarification whether or not the COMELEC has the authority to deduct more than 5% of the withholding tax that is provided for by law. Per reading of the said Minute Resolution on the matter, there is NO provision which supports the COMELEC to withhold an amount higher than 5%, more so retain the 7% final VAT as part of the executed contract price. The same ruling given to Smartmatic should also be applied to Topbest, being suppliers for the whole conduct of the May 09, 2016 National and Local Automated Elections.

In reply, please be informed that in BIR Ruling No. 390-2015, we held that COMELEC is exempt from VAT and percentage tax on its local purchases of goods and services as well as on importation of goods that will be used relative to the conduct of the May 9, 2016 National, Local and ARMM automated elections. Said pronouncement is anchored on Section 12 of Republic Act (RA) No. 8436, as amended by RA No. 9369, to wit:

> *"SEC. 12. Procurement of Equipment and Materials. — To achieve the purpose of this Act,* ***the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties****, subject to accounting and auditing rules and regulations. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness."* (Emphasis and underscoring supplied)

Pursuant to the above-quoted provision, the local purchases and importation of goods and services by COMELEC to be used in the May 9, 2016 National, Local and ARMM automated elections have been ruled as exempt from VAT. We also held that that the exemption of the COMELEC from VAT and percentage tax is limited to purchases and importations made during the period from October 2014 until October 2016.

Section 4.105-2 of Revenue Regulations (RR) No. 16-2005 discusses the nature and characteristics of VAT, to wit:

> *"SECTION 4.105-2. Nature and Characteristics of VAT. — VAT is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines. The seller is the one statutorily liable for the payment of the tax but the amount of the tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of RA No. 9337. However, in the case of importation, the importer is the one liable for the VAT."*

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Ordinarily, the COMELEC, being a government institution, would have subjected to five percent (5%) final withholding VAT its payments to suppliers of goods and services purchased by it, pursuant to Section 114 (C) of the National Internal Revenue Code of 1997, as amended, as implemented by Section 4.114 (2) (a) of RR No. 16-2005, to wit:

"SEC. 4.114-2. Withholding of VAT on Government Money Payments . . . . —

(a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a FINAL VAT due at the rate of five percent (5%) of the gross payment thereof. . . ."

However, as ruled in BIR Ruling No. 390-2015, COMELEC is exempt from VAT on its local purchases of goods and services that will be used relative to the conduct of the May 9, 2016 National, Local and ARMM automated elections. It must be noted that in a tax exemption granted by law, the government is essentially foregoing revenue that should have been collected by the Bureau of Internal Revenue. In the instant case, the Government is foregoing the collection of the 5% final withholding VAT on contracts entered into by COMELEC for the purchase of goods and services relating to the conduct of the May 9, 2016 automated elections.

In light of the exemption granted by law, it is clear, therefore, as already enunciated in BIR Ruling No. 139-2016, that COMELEC shall no longer withhold and remit to BIR the 5% final withholding VAT mandated under Revenue Memorandum Order (RMO) 23-2014, by reason of Section 12 of RA No. 8436, as amended by RA No. 9369. It must be clarified, however, that Topbest and COMELEC must resort to their contracts to determine who shall enjoy or receive the savings arising from the VAT exemption as this office has no jurisdiction to rule on the said matter.

We reiterate, however, that the foregoing treatment is only limited to purchases and/or importation of goods and services that will be used in, or directly related to, the conduct of the May 9, 2016 automated elections, during the period from October 2014 until October 2016. Any purchase of goods and services not related to the automated elections and outside the set period will already be subject to the 5% final VAT as provided by law.

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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