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

Bureau of Internal Revenue Ruling

Secs. 105, 108(A), NIRC of 1997		# 199-2016

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36 / 927-09-63

Date: May 17, 2016

ZAMBRANO & GRUBA LAW OFFICES
27th Floor 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City

Attention : **Atty. Antero Jose M. Caganda**
Atty. Marian Alexandra R. Lugtu

Gentlemen:

This refers to your letter dated September 13, 2011 requesting, on behalf of your client, **AMDATEX SERVICES CORPORATION (ASC) and AMDATEX LAS PINAS SERVICES, INC. (AMDATEX Las Pinas)** on the effective Value-Added Tax (VAT) zero-rating of the purchase of goods and services by an export-oriented service enterprise.

It is represented that the AMDATEX SERVICES CORPORATION (ASC) (TIN and AMDATEX LAS PINAS SERVICES, INC. (AMDATEX Las Pinas) (TIN (*collectively referred to as "Amdatex Companies")* are domestic stock corporations duly organized and existing under the laws of the Philippines; that they are both registered with the Securities and Exchange Commission (SEC); that currently, both Amdatex Companies are engaged in the *"business of Information Technology (IT) and IT enabled services primarily to foreign markets/clients including but not limited to: data encoding, data processing, data conversion, transcription, call-centre and Customer Relationship Management (CRM) services, business process outsourcing, systems designs, integration and management, software development, data center management, content development, outsourced billing and billing information services, outsourced marketing services and other services involving IT and business process needs and for this purposes, to do and all necessary things for or conducive to the attainment of such purpose including but not limited to the acquisition, construction, building, setting up, and provisioning of contact centers, back-office operations and data centers, the provisioning of or export of such services including consulting, project management, development and licensing of applications, software and contract management and marketing solutions and developing and administering of training programs for personnel required to provide the above products and services"*; and that in the conduct of Amdatex Companies' business, they purchase goods and services from Local Suppliers.

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Furthermore, the Amdatex Companies obtained the confirmatory rulings[1] from the BIR that services rendered to their customers outside the Philippines are subject to VAT at zero-rate, pursuant to Section 108 (B) of the 1997 Tax Code, as amended by Republic Act No. 9337, in relation to Section 4.108-5 (b)(2) of Revenue Regulations No. 16-2005.

Based on the foregoing representations, you now request for legal confirmation that:

1) As export-oriented service enterprise, the Amdatex Companies' purchases of goods and services from value-added tax registered suppliers in the Philippines are subject to VAT at zero rate; and

2) The Local Suppliers' sale of goods and/or services to the Amdatex Companies are effectively zero-rated transactions, and the Local Suppliers are not required to file an application for VAT zero-rating with the BIR on such sale of goods and/or services to the Amdatex Companies.

In reply, please be informed that both issues shall be discussed jointly hereunder.

Amdatex Companies' purchases of goods and services from local VAT registered suppliers are subject to 12% VAT.

As represented Amdatex Companies are domestic corporations engaged in the sale of services to non-resident foreign entities. However, its purchases of goods and services from local VAT-registered suppliers are subject to the 12% VAT.

Section 105 of the Tax Code of 1997, as amended, provides that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the same Code.

Under Section 108(A) of the Tax Code of 1997 as amended by Republic Act (R.A.) No. 9337, VAT shall be imposed on gross receipts derived from sale or exchange of services, and use or lease of properties. The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for a fee, remuneration or consideration. *(BIR Ruling No. 048-11 dated February 16, 2011)*

It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services.

There is no legal basis for imposing VAT at zero rate (0%) on Amdatex Companies' purchases of goods and services from value-added tax registered suppliers in the Philippines are subject to VAT at zero rate.

The VAT Rulings issued to the Amdatex Companies affirm that services rendered by AMDATEX to said foreign clients abroad and paid for in foreign currency are subject to VAT at zero percent (0%) rate.

[1] VAT Ruling No. 009-08 (October 29, 2008); VAT Ruling No. 010-08 (October 29, 2008)

You, however, rely on BIR Ruling No. DA-(VAT-039) 442-2008 dated November 19, 2008 to support your opinions. Portion of said ruling states:

> "Moreover, IAC's suppliers shall not impute or shift any VAT as part of the cost to be paid by IAC on its purchases. (BIR Ruling No. 013-2003 dated January 20, 2003) As such, IAC's suppliers shall be effectively zero-rated without need to file an application for zero-rating. Thus, IAC's suppliers may issue invoices/receipts with the term "ZERO-RATED SALE" written or printed prominently on the invoice or receipt pursuant to the aforesaid RMC No. 62-2005. (BIR Ruling No. DA-332-07)."

A review of the precedents of the above-mentioned ruling cites VAT Ruling No. 013-2003[2] dated January 20, 2003 and BIR Ruling No. DA-332-07 dated June 19, 2007 shows that: 1) No statement in VAT Ruling No. 013-03 can be found to support the interpretation that "suppliers shall not impute or shift VAT as part of the cost to be paid by the seller of services governed by Section 108(B)(2) of the Tax Code of 1997, as amended", or that "suppliers shall be effectively zero-rated without need to file an application for zero-rating"; (2) BIR Ruling No. DA-332-07 was issued to cover a transaction covered by export sales of goods or properties under Section 106(A)(2)(a)(5) of the same Tax Code.

Well-entrenched are the principles that the Government is never estopped from collecting taxes because of mistakes and errors of its agents and there are no vested rights in a wrong interpretation of the law[3].

In view of the foregoing, this Office cannot grant your request to confirm your opinions for lack of legal basis. Amdatex Companies' purchases of goods and services from local VAT-registered suppliers are subject to 12% VAT.

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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[2] BIR Ruling No. 013-03 is dated December 13, 2003 covering issues for income and withholding taxes of non-resident citizens. Correct citation is VAT Ruling No. 013-03.
[3] Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999.