REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

23(F); 42 (C) (3); 108(A) NIRC of 1997, as amended
BIR Ruling No. 017-18
02 03 - 2019

MAR 06 2019

R.J. DE GUZMAN & ASSOCIATES
Unit P1,Penthouse, Stanford Tower Condominium
8170 M. H. Del Pilar St.
Malate, Manila

Attention: **Atty. Rico J. De Guzman**

Gentlemen:

This refers to your letter dated September 25, 2018 requesting on behalf of your client, Nomura Co., Ltd., for confirmation that the service fees paid by Sunshine Fort North Bonifacio Realty Development Corporation to Nomura Co., Ltd., a non-resident foreign corporation based in Japan, pursuant to a Service Agreement, are exempt from Philippine income tax, withholding tax and value-added tax (VAT).

BACKGROUND

Nomura Co., Ltd. ("Nomura") is a corporation organized and existing under the laws of Japan and a resident thereof based on its Articles of Incorporation and Certificate of Status of Taxable Person duly issued by the District Director of Shiba Tax Office in Japan on 16 March 2018. Nomura has its office address at 3-4, Daiba 2-Chrome, Minato-ku, Tokyo, Japan. Nomura is not registered as a corporation or a partnership in the Philippines based on the Certification of Non-Registration of Company issued by the Philippine Securities and Exchange Commission ("SEC") on 21 March 2018.

On the other hand, Sunshine Fort North Bonifacio Realty Development Corporation ("Sunshine Fort") is a domestic corporation with principal office address at 2/F Park West, 7th Avenue corner 36th Street, North Bonifacio District, Global City, Barangay Fort Bonifacio, Taguig City, Philippines, and registered with the Bureau of Internal Revenue with Tax Identification No. (

On 15 November 2017, a Service Agreement was executed by and between Nomura (as Consultant) and Sunshine Fort (as Client) for Interior Design Services, which are to be performed by Nomura at its principal place of business in Japan. The service period under such Service Agreement is from November 15, 2017 to February 15, 2018.

Under the terms of the Service Agreement, "The Services will be consulted in Japan and is not covered by Philippine withholding tax". It likewise indicates that the Governing Law is "Japan".

0203-2019
MAR 06 2019

The Payment Schedule is also provided as follows:

	Total amount	Amount payable	Note
Launch Payment	JPY	JPY	Each launch funds shall be paid within one month from the day of contract signing
2nd Payment	JPY	JPY	Payments shall be made by the end of the following month after final products and [1. Scope of Services] getting inspected and accepted.
3rd Payment	JPY	JPY	Payment shall be made by the end of the following month after receiving a copy with the receipt stamp of ruling procedure of this Agreement from the Consultant.

As provided in the Certification issued by the President of Sunshine Fort North Bonifacio Realty Development Corporation, the services were performed entirely in Japan by Nomura.

Finally, the transactions pursuant to the said Service Agreement are not under investigation, on-going audit, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or judicial appeal, based on the Sworn Statement duly executed by the President of Sunshine Fort and BIR Certification dated November 8, 2018.

In reply, please be informed that under Section 23 (F) of the National Internal Revenue Code of 1997 ("1997 Tax Code"), as amended, a foreign corporation, like Nomura, whether or not engaged in trade or business in the Philippines, is subject to income tax only with respect to income derived from sources within the Philippines, to wit:

> "SEC. 23. General Principles of Income Taxation in the Philippines. - Except when otherwise provided in this Code:
>
> XXX XXX XXX
>
> (F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines." (Emphasis supplied)

Moreover, under Section 42 (A) (3) of the 1997 Tax Code, as amended, it is provided that income is considered derived in the Philippines only if services are actually performed in the Philippines, to wit:

> "SEC. 42. Income from Sources Within the Philippines. -

0203-2019
MAR 06

> (A) Gross Income From Sources Within the Philippines. - The following items of gross income shall be treated as gross income from sources within the Philippines:
>
> XXX XXX
>
> XXX
>
> (3) Services - Compensation for labor or personal services performed in the Philippines." (emphasis supplied)

In the case of *Commissioner of Internal Revenue* v. *Marubeni Corporation*[1], the Supreme Court held that only services rendered in the Philippines under a single contract are subject to the taxing jurisdiction of the Philippines and consequently subject to Philippine income tax. The Supreme Court ruled as follows:

> "Clearly, the service of design and engineering, supply and delivery, construction, erection and installation, supervision, direction and control of testing and commissioning, coordination. . ." of two projects involved two taxing jurisdictions. These acts occurred in two countries — Japan and the Philippines. While the construction and installation work were completed within the Philippines, the evidence is clear that some pieces of equipment and supplies were completely designed and engineered in Japan. The two sets of ship unloader and loader, the boats and mobile equipment of the NDC project and ammonia storage tanks and refrigeration units were made and completed in Japan. They were already finished products when shipped to the Philippines. The other construction supplies listed under the offshore portion such as the steel sheets, pipes and structures, electrical and instrumental apparatus, these were not finished products when shipped to the Philippines. They, however, were likewise fabricated and manufactured by the sub-contractors in Japan. All services for the design, fabrication, engineering and manufacture of the materials and equipment under Japanese Yen Portion I were made and completed in Japan. These services were rendered outside the taxing jurisdiction of the Philippines and are therefore not subject to contractor's tax." (Emphasis and underscoring supplied)

This Office likewise ruled in BIR Ruling No. 017-18 dated 17 January 2018 that:

> "Such being the case and since the subject services are rendered by GmbH outside the Philippines, the service fees to be paid therefor by SPI to GmbH are exempt from income tax and consequently from withholding tax."

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[1] G.R. No. 137377, 18 December 2001.

Such being the case, that the service fees to be paid by Sunshine Fort to Nomura for services rendered outside the Philippines, are exempt from Philippine income tax and consequently from withholding tax.

With respect to VAT, payments for the sale or exchange of services, including the use or lease of properties are subject to VAT only if the services are performed in the Philippines. Section 108 (A) of the Tax Code, as amended, provides that:

> "SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —
>
> (A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, 2 raise the rate of value-added tax to twelve percent (12%). . .
>
> The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration. . . "(Emphasis and underscoring supplied)

Accordingly, the service fees to be paid by Sunshine Fort for services performed by Nomura outside the Philippines are likewise exempt from VAT. (BIR Ruling No. 017-18 dated 17 January 2018)

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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