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

Secs. 23 (F), 42 (A) (3), (C) (3), and 108 (A), all of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 068-2013
OT- 0223-2020

MAR 12 2020

SYCIP GORRES VELAYO & CO.
6760 Ayala Avenue
1226 Makati City

Attention: **ATTY. JULES E. RIEGO**
Principal, Tax Advisory and Advocacy Group

Gentlemen:

This refers to your letter dated January 15, 2013 requesting on behalf of your client, **Newrest Group Holding SL ("NGH" for brevity)** for confirmation that service fees to be paid by Supply Oilfield & Marine Personnel Services, Inc. ("SOMPS, Inc." for brevity), for consultancy services to be rendered outside the Philippines is not subject to Philippine income tax and consequently to withholding tax as well as the twelve percent (12%) value added tax (VAT).

Background:

SOMPS, Inc. is a corporation duly organized and existing under the laws of the Philippines with office address at the 19th and 20th Floors, Pearlbank Centre, 146 Valero St., Salcedo Village, Makati City. It provides operating support services to the oil sector and manpower supply in the Philippines.

On the other hand, NGH is a company incorporated and existing under the laws of Spain with registered office address at AMB Barajas Logistics Park, Avenida Central nº 42, Modulos M y N, 28042 Madrid, Spain, and registered at the Commercial Registry of Madrid under Volume 21306, File 169, Sheet M-378565 and with tax identification number . NGH is part of a group of companies that is engaged in the business of providing catering and other related services for air, rail and sea travels.

On December 14, 2012, SOMPS, Inc. and NGH entered into a Consultancy Agreement wherein NGH will provide its expertise and support on certain financial and administrative management aspects which SOMPS, Inc. is engaged in. As described in Article II of the Agreement, NGH will provide the following services:

1. Evaluate all budgets including budget programming and cost control schedule and line item budgets;
2. Monitor and advance on control budget and capital expenditure or SOMPS, Inc.'s unit(s);
3. Review all adjustments to such budgets and develop proposals for corrective and/or preventive actions when there are deviations to the budget;
4. Analyze and determine the cause and effect of actual deviations from the current plan/budget;
5. Ensure the goals of SOMPS, Inc. are achieved with a minimum of resource consumption;

6. Advisory services on corporate finance, budgetary requirements and projections;
7. Defend and support the budget of SOMPS, INC.;
8. Review and analysis of SOMPS, Inc.'s annual fiscal performance;
9. Identify balance sheet items, understand their backgrounds and determine drivers of these positions;
10. Identify areas for improvement in terms of managing cash collections, supplier payments, investments of funds and handling of assets;
11. Develop recommendations to address areas for improvements;
12. Communicate and present review results to SOMPS, Inc.'s management team;
13. Identify and develop balance sheet organization projects for implementation;
14. Provide training in Budget Management in Spain at least once a year; and
15. Conduct Cost-Reduction Management workshop in Spain at least once a year.

Under the terms of the Agreement, NGH will render the above-enumerated services entirely outside the Philippines[1]. For services rendered, SOMPS, Inc. will pay a monthly service fee based on time-costs of actual man-hours spent invoiced by NGH.

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

Concerning income from the provision of services, under Sections 42 (A) (3) and (C) (3) of the National Internal Revenue Code of 1997, as amended, income is considered derived in the Philippines only if the services are actually performed in the Philippines, to wit:

> *"SEC. 42. Income from Sources Within the Philippines. –*
>
> *(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;***
>
> *xxx xxx xxx*

[1] Per Certification dated June 14, 2018 of Mr. Robert Joseph G. Villa, the Sr. Finance Manager and IT Head of SOMPS, Inc., which was notarized on June 18, 2018, no employees of SOMPS, Inc. were sent for training abroad as authorized under Article II of the Consultancy Agreement.

(C) Gross Income from Sources Without the Philippines. - The following items of gross income shall be treated as income from sources without the Philippines:

xxx xxx xxx

(3) Compensation for ***labor or personal services performed without the Philippines;*** *"* (Emphasis and underscoring supplied)

In *Commissioner of Internal Revenue v. Marubeni Corporation*[2], 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 in this wise:

"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)

Such being the case and since the subject services are rendered by NGH outside the Philippines, the service fees to be paid therefor by SOMPS, Inc. to NGH are exempt from income tax and consequently from withholding tax. ***(BIR Ruling 068-2013 dated February 18, 2013)***

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 National Internal Revenue Code of 1997, 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[3]*, raise the rate of value-added tax to twelve percent (12%). . .*

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[2] G.R. No. 1-37377, 18 December 2001

[3] The VAT rate was increased to 12 percent beginning February 1, 2006, in accordance with the Memorandum of the Executive Secretary to the Secretary of Finance dated January 31, 2006, as circularized by Revenue Memorandum Circular No. 7-2006 (Publishing the Full Text of the Memorandum from Executive Secretary.

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, since the services are performed by NGH outside the Philippines, the service fees to be paid therefor by SOMPS, Inc. are likewise exempt from VAT. ***(BIR Ruling 068-2013 dated February 18, 2013)***

This ruling being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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Eduardo R. Ermita dated January 31, 2006. Approving the Recommendation of the Secretary of Finance to Increase the Value Added Tax Rate from Ten Percent to Twelve Percent) dated January 31, 2006.