June 20, 2019

BIR RULING NO. 354-19

Section 109 (1) (H) of NIRC, as amended; BIR Ruling No. 742-18; BIR Ruling No. 373-11

EILSI-English International Language School, Inc.
460 Estaca Compostela, Cebu

Attention: *AAA*

Gentlemen :

This refers to your letter dated March 6, 2018 which was indorsed to this Office by Revenue Region No. 13, Cebu City on March 23, 2018, requesting for VAT exemption under Section 109 (1) (H) of the National Internal Revenue Code of 1997, as amended.

It is represented that English International Language School, Inc. ("EILSI" for brevity) with Taxpayer's Identification No. (TIN) 000-000-000, is a stock corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. CS200931206; that it is recognized by the government and permitted by the Technical Education and Skills Development Authority (TESDA) in accordance with the Certificate of TVET Program Registration No. 201807220007 dated January 16, 2018 to offer a program in English as a Second Language Program — Beginner Level with a duration of 280 hours; that the Program covers units of competencies to: 1) listen to common English expressions used in conversations; 2) speak meaningful and simple sentences; 3) read short and simple articles/short stories and reading passages; and 4) write accurate short stories, letters and forms that consist proper words and sentences, and that its primary purpose is to provide technical, vocational, education and training, including English as a second language.

In reply, please be informed that Section 109 (1) (H) of the Tax Code of 1997, as amended by Republic Act (RA) No. 10963, provides that —

"SEC. 109. Exempt Transactions. —

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(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from value-added tax.

xxx xxx xxx

(H) Educational services rendered by private educational institutions, duly accredited by the Department of Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA) and those rendered by government educational institutions";

Prescinding from the above-cited provision, EILSI shall be exempt from VAT on its educational services, *i.e.*, to offer a program in English as a Second Language Program — Beginner Level, which is duly accredited by TESDA.

However, this exemption does not extend to other activities involving sale of goods and services which are subject to VAT imposed under Sections 106 and 108 of the same Code. Hence, as long as EILSI will not engage in the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto, it will remain exempt from VAT. *(BIR Ruling No. 742-2018 dated April 30, 2018)*

On the other hand, EILSI's purchases of goods and services, are subject to VAT imposed under Sections 106 and 108 of the Tax Code of 1997, as amended. It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser. 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. Once shifted to the buyer/purchaser as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/purchaser has to pay in order to obtain the goods or services. Thus, the shifting of the VAT to EILSI does not make it the person directly liable and therefore, it cannot invoke its tax exemption privilege under Section 109 (1) (H) of the Tax Code of 1997, as amended, to avoid the passing on or shifting of the VAT.

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,

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

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