**July 12, 2019**

# BIR RULING NO. 382-19

PD 1869; Secs. 109 & 27 of NIRC; BIR Ruling No. 1090-18; BIR Ruling No. 632-17; BIR Ruling No. 359-17

*Perception Gaming, Inc.*
24th Floor, 6750 Building
Ayala Avenue, Makati City

Attention: *AAA*

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Gentlemen :

This refers to your letter dated July 12, 2018 requesting for confirmation that your company, Perception Gaming, Inc. ("PGI"), being a registered supplier of the Philippine Amusement and Gaming Corporation ("PAGCOR") for various gaming products and services, and thus, having contractual relationship with the latter, is entitled to the exemption from taxes, fees and charges being enjoyed by PAGCOR pursuant to Section 13 (2) (b) of Presidential Decree (PD) No. 1869, as amended.

It is represented that PGI is a corporation duly organized under the laws of the Philippines and is primarily engaged to distribute, sell, lease, import, export, exchange, mortgage, purchase, acquire goods and commodities, including but not limited to casino gaming products, machines, equipment, software and technology: to design, develop and manufacture goods and commodities, including but not limited to casino gaming products, machines, equipment, software and technology; to provide services to any person, firm, association, corporation and partnership such as but not limited to software development, club design, personnel training and maintenance service and to enter into, make, perform and carry out contracts of every kind and for any lawful purpose, pertaining to the business of the Corporation, or in any manner incident thereto, as principal, agent or otherwise, with any person, firm, association, corporation, and partnership.

Perception Gaming, Inc. was issued a Certificate of Registration by PAGCOR with Certificate of Registration No. 12-0119, as a Supplier/Contractor of (1) Gaming-Electronic

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Equipment, Tables & Furniture; (2) Gaming-Service-Casino Management; (3) Gaming Equipment & Paraphernalia; (4) Bingo Equipment & Paraphernalia; (5) Roulette Wheels; and (6) Slot Machines ("Gaming Products and Services").

Aside from being a PAGCOR supplier, PGI likewise provides gaming products and services to various grantees as PAGCOR gaming operators and licensees, such as, Tiger Resort, Leisure and Entertainment, Inc., Melco Resorts Leisure (PHP) Corporation, MCE Leisure (Philippines) Corporation; Goldphil Enterprises, Inc., and Three A's Bingo Ventures, Inc., among others, ("Gaming Operators and Licensees") for their respective gaming operations.

In view of the foregoing, you now request for confirmation of the following:

1. The income derived by PGI arising from the supply of gaming products and services rendered to PAGCOR and other gaming operators and licensees of the latter, is subject to 5% franchise tax, in lieu of all taxes, in accordance with Section 13 (2) (b) of Presidential Decree (PD) No. 1869, as amended;

2. All domestic purchases of goods and services by PGI directly related to its sale of gaming products and services in favor of PAGCOR and other gaming operators and licensees, shall not be subject to 12% VAT on the ground of its exemption from all taxes pursuant to Section 13 (2) (b) of PD No. 1869, as amended. Stated otherwise, no VAT shall be passed on to PGI with respect to its domestic purchase of goods and services that is directly related to its supply of gaming products and services as described in the first paragraph.

In reply, please be informed that Section 13 (2) (b) of P.D. No. 1869, as amended by RA 9487, provides, *viz.*:

"SEC. 13. Exemptions. —

(2) Income and other taxes — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation, nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any

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municipal, provincial, or national government authority.

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(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, **shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator**." (Emphasis supplied)

Furthermore, in the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue (G.R. No. 212530 dated August 10, 2016)*, the Supreme Court unequivocally affirmed the applicability of the tax exemption provisions of PD 1869, as amended, to PAGCOR's licensees and contractees. Thus, the Supreme Court ruled that:

"As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, **shall inure to the benefit of and extend to** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so **it must be that all contractees and licensees of PAGCOR**, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

For the same reasons that made us conclude in the December 10, 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services," we find it logical that its contractees and licensees shall likewise pay corporate income tax for income derived from such "related services."

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Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax." (Emphasis supplied)

With regard to the VAT exemption of PGI, Section 109 (1) (K) of the Tax Code of

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1997, as amended, provides:

> "**SEC. 109.** ***Exempt Transactions.*** — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
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> xxx xxx xxx
>
> (K) Transactions which are exempt under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529"; (Emphasis supplied)

Thus, PAGCOR and its licensees and contractees are exempt from the payment of VAT because PAGCOR's charter, PD 1869, is a special law that grants the latter exemption from taxes and such exemptions extend or inure to the benefit of its licensees and contractees. *(Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, G.R. No. 172087 dated March 15, 2011)*

Premises being considered, this Office hereby confirms your opinion, as follows:

1. Since PGI is a registered supplier and contractor of PAGCOR for the Gaming Products and Services, as above-mentioned, and thus, having a contractual relationship with the latter, the exemption from taxes, fees and charges enjoyed by PAGCOR is extended to PGI pursuant to Section 13 (2) (b) of PD 1869, as amended.

   Therefore, the income derived by PGI from its supply of gaming products and services (Gaming-Electronic Equipment, Tables & Furniture; Gaming-Service-Casino Management; Gaming Equipment & Paraphernalia; Bingo Equipment & Paraphernalia; Roulette Wheels; and Slot Machines) to PAGCOR, contracted during the validity of its certificate of registration, is subject only to the 5% franchise tax, and shall be exempted from the 30% corporate income tax under Section 27 of the Tax Code of 1997, as amended, and consequently to the withholding tax. However, for the purpose of applying the 5% franchise tax, any income that may be realized from related services or such services not falling under gaming operations, shall be subject to the 30% corporate income tax. *(BIR Ruling Nos. 1090-2018 dated July 16, 2018, 632-2017 dated December 19, 2017 and 359-2017 dated August 9, 2017)*

2. All domestic purchases of goods and services and importations made by PGI directly related to its sale of gaming products and services (Gaming-Electronic Equipment, Tables & Furniture;

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Gaming-Service-Casino Management; Gaming Equipment & Paraphernalia; Bingo Equipment & Paraphernalia; Roulette Wheels; and Slot Machines), shall not be subject to 12% VAT on the ground of its exemption from all taxes pursuant to Section 13 (2) (b) of PD No. 1869, as amended. Hence, no VAT shall be passed on to PGI with respect to its domestic purchase of goods and services that is directly related to its sale of gaming products and services. *(BIR Ruling Nos. 1090-2018 dated July 16, 2018, 632-2017 dated December 19, 2017 and 359-2017 dated August 9, 2017)*

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall 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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