April 30, 2018

BIR RULING NO. 745-18

RA 7916; RR No. 2-98; BIR Ruling No. 291-12

Cocochem Agro-Industrial Park, Inc.
CAIP-SEZ, Brgy. San Antonio
San Pascual, Batangas

Attention: *AAA*

Gentlemen :

This refers to your letter dated March 5, 2014 requesting, on behalf of **COCOCHEM AGRO-INDUSTRIAL PARK, INC.** exemption from expanded withholding tax (EWT) on account of its registration with the Philippine Economic Zone Authority (PEZA).

It is represented that **COCOCHEM AGRO-INDUSTRIAL PARK, INC.**, with Tax Identification Number 000-000-000-000, is a domestic company duly registered with the Securities and Exchange Commission (SEC) with SEC Registration No. A199909527; and that it is also registered with PEZA as Developer/Operator with Registration Certificate No. EZ 03-03 dated May 26, 2003 to establish, develop, construct, administer, manage and operate a special ECOZONE to be known as the Cocochem Agro-Industrial Park-SEZ in Bauan, Batangas, including: a) power generation and distribution project, b.1) construction, operation and maintenance of tank and warehousing facilities, b.2) construction, operation and maintenance of waste water treatment facility for lease/use of PEZA registered enterprises, c.1) operation and maintenance of pier facilities and c.2) operation and maintenance of weighbridge facilities.

Based on the PEZA Certification dated January 20, 2014, **COCOCHEM AGRO-INDUSTRIAL PARK, INC.** is entitled to the 5% Special Tax on Gross Income under Section 24 of Republic Act (RA) No. 7916, as amended by RA No. 8748. The 5% Special Tax on Gross Income applies upon expiry of the Income Tax Holiday (ITH) granted to the Company.

In reply, please be informed that Section 2.57.5 (B) (2) of Revenue Regulations

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(RR) No. 2-98, as amended by RR No. 14-02, provides:

> "SECTION 2.57.5. Exemption from Withholding. — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx xxx
>
> (2) Corporations registered with the Board of Investments, Philippine Export Processing Zones and Subic Bay Metropolitan Authority enjoying exemption from the income tax pursuant to EO 226, as amended, Republic Act No. 7916 and the Omnibus Investments Code of 1987 and RA 7227, as amended, respectively;
>
> xxx xxx xxx." (Underscoring supplied)

Based on the foregoing, Section 2.57.5 (B) (2) of RR No. 2-98, as amended, is explicit in its provisions that the expanded withholding tax does not apply to income payments to persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special. Accordingly, since **COCOCHEM AGRO-INDUSTRIAL PARK, INC.** is a PEZA-registered enterprise, income payments made to it with respect to its PEZA-registered activity as Developer/Operator to establish, develop, construct, administer, manage and operate a special ECOZONE to be known as the Cocochem Agro-Industrial Park-SEZ in Bauan, Batangas, shall not be subject to the expanded withholding tax prescribed in RR No. 2-98, as amended. *(BIR Ruling No. 291-2012 dated April 25, 2012)*

It must be emphasized, however, that **COCOCHEM AGRO-INDUSTRIAL PARK, INC.** is constituted as withholding agent for the government. As such, it is required to withhold the tax on compensation income of its employees or the withholding tax on income payments to persons subject to tax pursuant to Section 57 of the Tax Code of 1997, as amended.

Pursuant to Section 4 of Republic Act (RA) No. 10708, [1] **COCOCHEM AGRO-INDUSTRIAL PARK, INC.** is required to file its tax returns and pay its tax liabilities, on or before the deadline as provided under the 1997 Tax Code, as amended, using the electronic system for filing and payment of taxes of the BIR. Furthermore, it shall file with PEZA a complete annual tax incentives report of its income-based tax incentives, VAT and duty exemptions, deductions, credits or exclusions from the tax base, as may be provided under RA No. 7916, within thirty (30) days from the deadline for filing of tax returns and payment of taxes.

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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,

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

Footnotes

1. An Act Enhancing Transparency in the Management and Accounting of Tax Incentives Administered by Investment Promotion Agencies.

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