REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Sec. 108 (B) (2) of the National Internal Revenue Code (Tax Code) of 1997, as amended; RR 4-2007;
BIR Ruling No. 134-18, BIR Ruling No. 413-12; VAT Ruling No. 010-05; VAT Ruling No. 018-05
VAT- 003 - 2023

JAN 19 2023

ENDEC, INC.
Unit 610, Cattleya Building
235 Salcedo Street
Legaspi Village, Makati City

Gentlemen:

This refers to your letter dated August 5, 2022 requesting for confirmation of your opinion that: (1) the consultancy services rendered in the Philippines by Endec, Inc. ("Endec"), a domestic corporation and a VAT-registered taxpayer, in favor of Black and Veatch Special Projects Corp. ("BVSPC" for brevity), a corporation organized under the laws of the state of Missouri, U.S.A. and a foreign corporation not engaged in trade or business in the Philippines, is subject to VAT at zero percent (0%) rate pursuant to Section 108 (B) (2) of the Tax Code of 1997 ("Tax Code"), as amended, and (2) that Endec is entitled to apply for the refund of any excess or unutilized input VAT due or paid attributable to its zero-rated sale of services to BVSPC, subject to the conditions provided in Section 112 (A) of the same Code.

It is represented that on October 15, 2015, the Government of the Republic of the Philippines and the Government of the United States of America entered into an Agreement Concerning Cooperation in Countering the Proliferation of Weapons of Mass Destruction, Strengthening Maritime Security, and other purposes (CTRA). The Defense Threat Reduction Agency ("DTRA") is the implementing agency of the United States of America's Department of Defense tasked to execute the Cooperative Threat Reduction Integrating Contract ("CTRIC") under the CTRA.

To execute this Agreement, the DTRA entered into a Task Order Agreement with BVSPC. In execution of the CTRA, BVSPC, as prime contractor to implement the CTRIC in the Philippines, entered into a Basic Ordering Agreement with ENDEC to perform consultancy services in the areas of planning, organization, management, logistics, training, sustainment support, technical expertise, advisory on host nation laws and regulations, standards evaluation, studies and reports, and in addition, furnish labor, equipment, and materials.

The Basic Ordering Agreement further provides that in consideration of the various consultancy services to be rendered by ENDEC to BVSPC for the purpose of executing the CTRIC in the Philippines, ENDEC shall be paid in foreign currency – specifically United States dollars (US$).

Hence, this request.

In support of your request, you have submitted the following documents, to wit:

1. Basic Ordering Agreement between BVSPC and Endec, Inc. dated March 25, 2021;
2. Certificate of Non-Registration of Company issued by the Securities and Exchange Commission (SEC) that BVSPC does not appear in the records of the SEC to be registered as a corporation or partnership in the Philippines;
3. BIR Certificate of Registration (COR);
4. Judicial Affidavit of Endec Secretary attesting that the services under the Consultancy Agreement were rendered to a non-resident foreign corporation and that such services were performed in the Philippines;
5. Articles of Incorporation and By-Laws of BVSPC (as amended) showing that BVSPS is a corporation duly incorporated under the laws of the State of Missouri, U.S.A. and a Certificate of the Executive Vice President and Secretary of BVSPC attesting that BVSPC is a corporation registered in accordance with the laws of the United States and that it has no permanent establishment in the Philippines, duly authenticated by the Philippine Consulate/Consular Office/Embassy located at Washington D.C., United States; and
6. Copies of VAT zero-rated Sales Invoices and Official Receipts issued by Endec to BVSPC.

In reply thereto, please be informed that Section 108 (B) (2) of the Tax Code, as implemented by Section 4.108-5 (b) (2) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007 states that —

> "(B) Transactions subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) x x x;
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;
>
> xxx xxx xxx"

Applying the afore-cited provisions of the law to the case under consideration, this Office holds that the services rendered by ENDEC to BVSPC which are paid for in acceptable foreign currency will qualify for VAT zero-rating pursuant to Section 108 (B) (2) of the Tax Code of 1997, as implemented by Section 4.108-5 (b) (2) of Revenue Regulations No. 16-2005, as amended by

RR No. 4-2007, provided, that the same is remitted inwardly and accounted for in accordance with the rules and regulations of the BSP. *(BIR Ruling No. 134-18 dated February 8, 2018, BIR Ruling No. 413-12 dated June 15, 2012)*

Furthermore, considering that the services rendered by ENDEC to BVSPC qualify for VAT zero-rating, ENDEC is likewise entitled to apply for the refund of any excess or unutilized input VAT due or paid attributable to its zero-rated sale of services to BVSPC, subject to the conditions provided in Section 1-12 (A) of the Tax Code, as implemented by Section 19 of RR 4-2007. *(VAT Ruling No. 018-05 dated September 13, 2005)*

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 as null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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