REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

E.O. 226; RR 2-98
BIR Ruling No. 334-11; BIR Ruling No. 333-14
#399-2018
3-9-2018

DMCI POWER CORPORATION
3rd Floor DMCI Plaza Building,
2281 Don Chino Roces Avenue,
Makati City 1231

Attention : **Mr. Nestor D. Dadivas**
President

Gentlemen:

This refers to your letter dated May 15, 2012 requesting on behalf of DMCI POWER CORPORATION, certificate of tax exemption from income and expanded withholding taxes on account of its registration with the Board of Investments (BOI) under Executive Order No. 226, otherwise known as the "Omnibus Investments Code of 1987".

Documents submitted show that DMCI POWER CORPORATION, with Tax Identification No. (TIN) [redacted] is a domestic corporation duly organized under the Philippine laws; that the Corporation is registered with the Securities and Exchange Commission (SEC) bearing SEC Certificate of Registration No. [redacted] that the primary purpose for which it was incorporated is to acquire, design, develop, construct, invest in, and operate electric power plants and engage in the business of a Generation Company in accordance with Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the "EPIRA"); to invest in, operate and engage in missionary electrification as a Qualified Third Party under the EPIRA and its implementing rules and regulations; and to design, develop, assemble and operate other power related facilities, appliances and devices; that it is registered with the Board of Investments per Certificate of Registration No. [redacted] dated July 30, 2014 as a new operator of a 15 MW Bunker-Fired Power Plant on a pioneer status under the Omnibus Investments Code of 1987 (E.O. 226); that DMCI POWER CORPORATION shall be entitled to income tax holiday (ITH) for the said activity for a period of six (6) years beginning from December 2014 or actual start of commercial operations, whichever is earlier but in no case earlier than the date of registration; and that the ITH of DMCI POWER CORPORATION shall be limited only to the revenue generated from its registered activity as New Operator of 15 MW Bunker-Fired Power Plant (Brgy. Sta. Isabel, Calapan City, Oriental Mindoro).

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DMCI POWER CORPORATION, under the Specific Terms and Conditions of its BOI Registration for the above registered activity, is obligated to observe the following production and sales revenues:

Particulars	**1**	**2**	**3**	**4**	**5**
Sales Volume (GWh)					
Price (Php/KWh)					
Revenues (Php in MM)					

In reply, please be informed that under Section 2.57.5 (B) (2) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-2001 implementing Section 57 (B) of the Tax Code of 1997, as amended, the withholding tax prescribed in the said Regulations shall not apply to income payments to persons enjoying exemption from the income tax provided by Republic Act No. 7916 and the Omnibus Investments Code of 1987. *(BIR Ruling No. 334-11 dated September 7, 2011)*

Accordingly, since DMCI POWER CORPORATION's 15 MW Bunker-Fired Power Plant (Brgy. Sta. Isabel, Calapan City, Oriental Mindoro), is a BOI registered activity, this Office is of the opinion as it hereby holds, that income payments received by DMCI POWER CORPORATION in connection with the operation of the said Bunker-Fired Power Plant, are exempt from the creditable withholding tax imposed under RR No. 2-98, as amended by RR No. 6-2001, for a period of six (6) years from December 2014 or actual start of commercial operations, whichever is earlier but in no case earlier than the date of registration. *(BIR Ruling No. 333-14 dated August 15, 2014)*

It must be emphasized that the above exemption from the creditable withholding tax covers only the revenues generated from DMCI POWER CORPORATION's operation of its registered activity, 15 MW Bunker-Fired Power Plant (Brgy. Sta. Isabel, Calapan City, Oriental Mindoro).

Moreover, DMCI POWER CORPORATION's entitlement to ITH for its registered activity, 15 MW Bunker-Fired Power Plant (Brgy. Sta. Isabel, Calapan City, Oriental Mindoro) is not automatic as it has still to comply with the provisions of the Specific Terms and Conditions of its pertinent BOI Registration.

Pursuant to Section 4 of Republic Act (R.A.) No. 10708, DMCI POWER CORPORATION 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, DMCI POWER CORPORATION shall file with the BOI a complete annual tax incentives report of its income-based tax incentives, value-added tax (VAT) and duty exemptions, deductions, credits or exclusions from the tax base, as may be provided under E.O. 226, within thirty (30) days from the deadline for filing of tax returns and payment of taxes.

It should be understood that DMCI POWER CORPORATION shall be constituted as a withholding agent for the government if it acts as employer and any of its employees received compensation income subject to compensation withholding tax, or if it makes payments to individuals or corporations subject to the withholding taxes as source as

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required under Chapter XIII and Section 57 of the Tax Code of 1997, as amended and implemented by Revenue Regulations (RR) No. 2-98, as amended.

Likewise, DMCI POWER CORPORATION is required to file on or before the 15th day of the fourth month following the close of your accounting period of a Profit and Loss Statement and Balance Sheet with the Annual Information Return under oath, stating your gross income and expenses incurred during the taxable year.

Finally, the DMCI POWER CORPORATION's books of accounts and other pertinent records shall be subject to periodic examination by revenue enforcement officers of this Bureau for the purpose of ascertaining whether you have been complying with the conditions under which you have been granted tax exemption or tax incentives and your tax liability, if any, pursuant to Section 235 of the Tax Code of 1997, as amended.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue
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