REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building

Section 109 (1) (K) of the Tax Code of 1997, as amended
Section 13 (2) (b) of P.D. No. 1869, as amended by RA No. 9487
BIR Ruling No. 359-17
VAT- 442-2022

DEC 27 2022

DONGGWANG CLARK CORPORATION
M Recto Highway, Clark ODE County
Clark Freeport Zone, Pampanga

Attention: Atty. Fernando Cunanan
and
Atty. Jherly Pajarin

Gentlemen:

This refers to your letter requesting on behalf of Donggwang Clark Corporation ("DCC"), for confirmation of your opinion that all domestic purchases of goods and services and importations of equipment, paraphernalia, construction materials, professional services for the sole and exclusive use for the casino operation of DCC shall not be subject to 12% value-added tax pursuant to Section 13 (2) (b) of Presidential Decree (PD) No. 1869, as amended by Republic Act (RA) No. 9487.

Documents submitted show that DCC, with Tax Identification Number 466-469-483, is a corporation duly organized under the laws of the Philippines; that DCC is registered with Securities and Exchange Commission (SEC) under Registration No. CS201435366; and that DCC is primarily engaged in the management and operation of golf courses, residential complex, casino, hotels, international schools, restaurants, commercial and business offices and other related businesses and services situated within Clark Freeport Zone.

It is represented that the Philippine Amusement and Gaming Corporation (PAGCOR) had adopted the concept of Integrated Resort (IR) Development for its casino licensees, of which proponents are required to submit a Project Implementation Plan (PIP) outlining the committed development of a casino and all its support facilities and amenities, and without which, a casino license will not be issued.

This development model ensures that local casinos can compete with casinos abroad and can sustain their operations and viability; hence, it would be remiss to isolate or strictly confine the definition of a casino as only the gaming venue or area since the concept or development required by PAGCOR for the issuance of a gaming license is an IR Casino which consists of the gaming area and all support amenities.

On July 12, 2017, PAGCOR issued a Provisional License in favor of DCC for the development and construction of an IR Casino inside the Clark Freeport Zone which will cover a total area of approximately 309 hectares.

PAGCOR granted to DCC the Provisional License to establish and operate the Resort Casino for both local and foreign patrons who are at least 21 years of age. The development commitment of DCC was based on the submitted PIP outlining the facilities needed to complete the IR Casino. Once completed, a permanent casino license will be issued.

The components in the PIP of DCC's IR Casino are:

	PIP Projects
1	Hotels
2	D'Heights Casinos
3	36 Golf Course
4	Villas and Condominiums
5	Shopping Mall
6	Indoor Water Park
7	Park

Hence, this request.

In reply, please be informed that Section 13 (2) (b) of P.D. No. 1869, as amended by RA No. 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 municipal, provincial, or national government authority.

xxx xxx xxx

(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

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remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator."

In the recent *en banc* decision of the Supreme Court in the consolidated cases of ***Saint Wealth Ltd., vs. Bureau of Internal Revenue and Marco Polo Enterprises Limited vs. Secretary of Finance (GR Nos. 252965 and 254102),*** citing also the case of Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, (G.R. No. 212530), the Supreme Court unequivocally affirmed the applicability of the tax exemption provisions of PD 1869, as amended, to PAGCOR's licensees and the contractees. Thus, the Supreme Court ruled that:

> ***"The PAGCOR Charter Imposes a Franchise Tax upon its Licensees on Revenue Derived from Gaming Operations, and Income Tax, VAT, and Other Applicable Taxes on Revenues Derived from Non-Gaming Operations.***
>
> *Under Section 13(2)(a) of the PAGCOR Charter, PAGCOR is exempt from the payment of any and all taxes on its income derived from gaming operations, except for a five percent (5%) franchise tax on its gross revenues of earning:*
>
> > *"SECTION 13. Exemptions. –*
> >
> > *xxx*
> >
> > *(2) <u>Income and other taxes</u>. – (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, <u>except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise</u>.*** *Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fess or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority. (Emphasis and underscoring supplied)*
>
> *Such exemption extends to PAGCOR's licensees pursuant to Section 13(2)(b) of the PAGCOR Charter, which provides:*
>
> > *(b) Others: The* ***exemptions 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 <u>in connection with the operations of the casino(s) authorized to be conducted under this Franchise</u> *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 and underscoring supplied)*

Considering the above-cited provisions, this Court clarified in Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue (Bloomberry), that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, ***inures to the benefit of PAGCOR's licensees****:*

"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****."*

xxxx

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****.*

Clearly, both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations. However, a plain reading of the PAGCOR Charter and the ruling in Bloomberry shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the ***operations of casinos and other related amusement places****.*

Stated differently, the payment of this five percent (5%) franchise tax only applies to PAGCOR licensees which operate casinos and other related amusement places, and excludes those licensees who derive profit from other means, such as POGOs. *Thus, POGOs, including offshore-based POGO licensees, are not taxed under the PAGCOR Charter."*

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

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." (underlining supplied)

Likewise, Sections 106(A)(2)(b) and 108(B)(3) of the Tax Code of 1997, as amended, provide that the following sales of goods and services by VAT-registered persons shall be subject to zero percent (0%) rate:

"SEC. 106. Value-Added Tax on Sale of Goods or Properties. -

(A) Rate and Base of Tax. – xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(b) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

xxx xxx xxx"

"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

xxx xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate - xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

xxx xxx xxx" (underlining supplied)

Premises being considered, on the items requested for confirmatory opinion, this Office hereby rules, as follows:

1. Since DCC is a Licensee of PAGCOR to undertake the development and construction of a casino-resort and to establish and operate the Casino, the exemption from taxes, fees and charges enjoyed by PAGCOR is extended to DCC pursuant to Section 13(2)(b) of PD 1869, as amended. Therefore, the income derived by DCC from its operation of D' Heights Resort and Casino, is subject only to the 5% franchise tax, and shall be exempted from the 25% 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 25% corporate income tax. (Section 14(5) of PD No. 1869, as amended.) (BIR Ruling No. 359-17 dated August 9, 2017)

2. All domestic sales of goods and services by VAT registered persons to DCC directly related to its gaming operations as described in the first paragraph shall be subject to zero percent (0%) VAT rate. Hence, no VAT shall be passed upon to DCC with respect to its domestic purchase of goods and services that is directly related to its gaming operations as described in the first paragraph. (Sections 106(A)(2)(b) and 108(B)(3) of the Tax Code of 1997, as amended) and (*Saint Wealth Ltd., vs. Bureau of Internal Revenue and Marco Polo Enterprises Limited vs. Secretary of Finance (GR Nos. 252965 and 254102).* Sales of goods and services, however, to DCC related to its non-gaming operations shall be subject to VAT.

3. All importations made by DCC directly related to its gaming operations as described in the first paragraph 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. (*Section 109(1)(K) of the Tax Code of 1997, as amended) and (Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, G.R. No. 172087 dated March 15, 2011) (BIR Ruling No. 359-17 dated August 9, 2017*). However, DCCs importation related to its non-gaming operations shall be subject to VAT and other applicable taxes.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue