REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sections 28(B)(1), 42(C), 98, 99, 101 (B) of the 1997 Tax Code, as amended; Section 2.57.1 of Revenue Regulations No. 2-98, as amended.	
BIR Ruling No. [DA-054-08]; BIR Ruling No. DA-514-06; BIR Ruling No. [DA-272-08].	
OT- 001-2022	
JAN 03 2022	

ANTI-RED TAPE AUTHORITY
4th & 5th Floor, NFA Building
NFA Compound, Visayas Avenue
Brgy. Vasra, Diliman, Quezon City
Philippines 1128

Attention: **SECRETARY JEREMIAH B. BELGICA**
Director General

Gentlemen:

This refers to your request on behalf of Anti-Red Tape Authority ("**ARTA**") for guidance on the taxation aspect of the following items relating to the ARTA's training and capacity-building program for its personnel:

1. Exemption from Donor's tax of the New Zealand counterpart amounting to [illegible] and

2. ARTA's counterpart amounting to [illegible] sourced from its FY 2021 General Appropriations Act ("**GAA**") (Regular Fund 101) – MOOE Allotment.

Background:

1. ARTA received a proposal from Creative HQ ("**CHQ**"), a wholly owned subsidiary of Wellington, NZ, to conduct the T7 Masterclass in Innovation, a training and capacity-building program for its personnel (the "**Program**").

2. CHQ is New Zealand's leading provider of structured innovation and capability building whose purpose is to deliver transformative innovation programs for start-ups, entrepreneurs, and large organizations, including Government. It has delivered services to public and private stakeholders both in New Zealand and overseas jurisdictions including Australia, Singapore, Japan, Sri Lanka, Indonesia, and the Philippines.

3. ARTA met with the representatives from CHQ, New Zealand G2G Partnerships ("**NZ G2G**"), and Ambassador Peter Kell, Ambassador of New Zealand in the Philippines, to discuss the Program (collectively, the "**Parties**").

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4. The Parties agree that the New Zealand Government, through NZ G2G, would co-fund the Program up to NZD [redacted] million) or approximately seventy percent (70%) of the total cost of the Program ("**NZ Funds**") and ARTA will shoulder the remaining [redacted] or approximately thirty percent (30%) of the cost of training.

5. The NZ Funds will be paid directly by the New Zealand Government to CHQ while ARTA's counterpart will be sourced from its FY 2021 GAA (Regular Fund 101) – MOOE.

6. The Program will be facilitated by CHQ remotely, *i.e.*, outside the Philippines.

In reply, please be informed as follows:

Donation by New Zealand Government of [redacted] to ARTA is exempt from Donor's Tax

Sections 98 and 99 of the 1997 National Internal Revenue Code of the Philippines, as amended ("**Tax Code**"), provide that a tax of six percent (6%) shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of a property (real or personal) by gift, to *wit*:

> ***"Section 98. Imposition of Tax. –***
>
> *(A) There shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift, a tax, computed as provided in Section 99.*
>
> *(B) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.*
>
> ***Section 99. Rates of Tax Payable by Donor. –***
>
> *(A)* ***In General.*** *– The tax for each calendar year shall be six percent (6%) computed on the basis of the total gifts in excess of Two hundred fifty thousand pesos (P250,000) exempt gift made during the calendar year.*
>
> *(B) Any contribution in cash or in kind to any candidate, political party or coalition of parties for campaign purposes shall be governed by the Election Code, as amended."*

However, please note that Section 101 (B) of the Tax Code states that gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, shall be exempt from payment of Donor's Tax, to *wit*:

> *"Section 101. Exemption of Certain Gifts. – The following gifts or donations shall be exempt from the tax provided for in this Chapter:*
>
> *xxx xxx xxx*

(B) In the Case of Gifts Made by a Nonresident not a Citizen of the Philippines. –

(1) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government." (Underscoring supplied)

In this case, while it is true that the funds of the New Zealand Government will be directly paid to CHQ, it is clear that the intention of the parties is for the New Zealand Government to donate NZD to ARTA, a government agency attached to the Office of the President, to implement the Program.

Thus, the donation by the New Zealand Government of million) to ARTA is exempt from Donor's Tax. And, on the part of the donee agency ARTA, the donated amount shall be excluded from its gross income and shall be exempt from income tax pursuant to Section 32(B)(3) of the Tax Code.

ARTA's payment to CHQ is exempt from Philippine income tax, expanded withholding tax and value added tax

1. ***Income Tax***

Section 28 (B) (1) of the Tax Code[1] provides that non-resident foreign corporations are subject to income tax only on income derived from all sources within the Philippines, to *wit*:

"Section 28. Rates of Income Tax on Foreign Corporations. –

xxx xxx xxx

"(B) Tax on Nonresident Foreign Corporation. —

(1) In General. – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines, effective January 1, 2021, shall pay a tax equal to twenty-five percent (25%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c)" (Underscoring supplied)

Conversely, non-resident foreign corporations are not subject to income tax on income derived from sources outside the Philippines.

[1] As amended by Section 7 of Republic Act No. 11534, otherwise known as the "CREATE", "An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 and 290 of the National Internal Revenue Code of 1997 as Amended and Creating Therein New Title XIII, and For Other Purposes, March 26, 2021.

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The above provision should be read together with Section 42 (C) of the Tax Code which provides, *viz.*:

> *"Section 42. Income from Sources Within the Philippines. –*
>
> xxx xxx xxx
>
> *(C) Gross Income from Sources Without the Philippines. — The following items of gross income shall be treated as income from sources without the Philippines:*
>
> xxx xxx xxx
>
> *"(3) Services. — Compensation for labor or personal services performed without the Philippines;"* (Underscoring supplied)

Considering that the Program to be conducted by CHQ will be facilitated or performed remotely, *i.e.*, outside the Philippines, particularly in New Zealand, then, the service fees to be paid to CHQ by ARTA are not subject to Philippine income tax.[2] In fact, even the Double Taxation Agreement between the Philippines and New Zealand[3] provides that the profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein – a scenario which the parties did not contemplate in their agreement.

Further, such services to be performed abroad by CHQ are not subject to withholding tax under Revenue Regulations (**"RR"**) No. 2-98, as amended.[4] Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income.[5] Needless to state, the withholding of income/creditable withholding tax on a certain income payment presupposes that the said income payment is considered taxable income to the payee. Therefore, reference must necessarily be made to the income source rules under our tax system.

Corollarily, Section 2.57.1 (I) of RR No. 2-98, as amended, provides that non-resident foreign corporations are subject to final withholding tax only on their income derived from all sources within the Philippines. The said section does not provide that non-resident foreign corporations are subject to final withholding tax on their income derived from sources without the Philippines.

Since payments to foreign corporations, like CHQ, are not among those specified in the said regulations, consequently, services rendered abroad by these corporations are not subject to the expanded withholding tax prescribed in RR No. 2-98, as amended.

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[2] BIR Ruling [DA-054-08], January 30, 2008; BIR Ruling DA-514-06, dated 25 August 2006; BIR Ruling [DA-272-08], April 25, 2008.
[3] Took effect on January 1, 1981
[4] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.
[5] Section 2.57 (B), Revenue Regulations No. 2-98, as amended.

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2. *Value Added Tax*

Section 108 (A) of the Tax Code[6] states:

> *"Section 108. Value Added Tax on Sale of Services and Use or Lease of Properties. –*
>
> *(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.*
>
> *The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration... "* (Underscoring supplied)

Prescinding from the above-cited provisions, it is undisputed that the value-added tax (**"VAT"**) applies only to services performed in the Philippines and not to services rendered outside the Philippines. Hence, since CHQ will be conducting the Program outside the Philippines, the service fees payable by ARTA to CHQ are not subject to VAT.[7]

This ruling is 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[6] As amended by Section 33 of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)", January 1, 2018.
[7] BIR Ruling [DA-272-08], April 25, 2008.