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

Secs. 23 (F), 42 (A) (3), (C) (3), and 108 (A), all of the Tax Code of 1997, as amended
BIR Ruling No. 068-2013
CT-340-2021
SEP 28 2021

BDB LAW DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House, Rufino Cor. Valero Sts.
Salcedo Village, 1227 Makati City

Attention: **ATTY. BENEDICTA DU-BALADAD**
Managing Partner

Gentlemen:

This refers to your request on behalf of your client, **Bank of the Philippine Islands ("BPI" for brevity)**, for confirmation of your opinion that payments made to **Surecomp International Ltd ("SIL" for brevity)** by BPI are not subject to Philippine income tax as the services are not to be rendered in the Philippines.

Background:

BPI is a corporation organized and existing under the laws of the Republic of the Philippines, with principal place of business located at BPI Head Office Building, Ayala Avenue corner Paseo de Roxas, Makati City, Philippines 1550.

On the other hand, SIL is a company registered in Barbados with office located at Worthing Corporate Centre, Worthing, Main Road, Christ Church BB15008, Barbados, West Indies. It is not registered either as a corporation or partnership and has not been licensed to do business in the Philippines, as confirmed by the Certification of Non-Registration dated May 28, 2013 issued by the Securities and Exchange Commission (SEC).

SIL entered into a Maintenance Agreement with BPI, under which SIL will maintain the computer software programs known as the IMEX V6.3.1. While the computer system is located in Manila, the maintenance and repair of any system malfunction are to be performed in Barbados using internet-based Remote Computer Repair technology. No part of the services under the Agreement will be performed in the Philippines, and no personnel of SIL will be sent to the Philippines.

In consideration thereof, BPI shall pay SIL annual maintenance fee amounting to US$ 124,656, subject to adjustment every year based on the percentage increase, if any, in the US Consumer Price Index.

The term of the current Agreement is twelve (12) months beginning August 9, 2012, renewable on the same terms for another twelve (12) months for each renewal, which must be made at least ninety (90) days before the anniversary thereof, unless either party gives notice to the other of its desire not to renew the Agreement. The minimum term of the Agreement is Three (3) years.

In reply, please be informed that under Section 23 (F) of the National Internal Revenue Code (Tax Code) of 1997, as amended, a foreign corporation, like SIL, whether or not engaged in trade or business in the Philippines, is subject to income tax only with respect to income derived from sources in the Philippines, to wit:

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"SEC. 23. General Principles of Income Taxation in the Philippines. - Except when otherwise provided in this Code:

xxx xxx xxx

(F) ***A foreign corporation****, whether engaged or not in trade or business in the Philippines,* ***is taxable only on income derived from sources within the Philippines.****"* (Emphasis and underscoring supplied)

Concerning income from the provision of services, under Sections 42 (A) (3) and (C) (3) of the Tax Code of 1997, as amended, income is considered derived in the Philippines only if the services are actually performed in the Philippines, to wit:

"SEC. 42. Income from Sources Within the Philippines. –

(A) Gross Income from Sources Within the Philippines. - The following items of gross income shall be treated as gross income from sources within the Philippines:

xxx xxx xxx

(3) Services. - Compensation for ***labor or personal services performed in 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) Compensation for ***labor or personal services performed without the Philippines****;"* (Emphasis and underscoring supplied)

In *Commissioner of Internal Revenue v. Marubeni Corporation*[1], the Supreme Court held that only services rendered in the Philippines under a single contract are subject to the taxing jurisdiction of the Philippines and consequently subject to Philippine income tax. The Supreme Court ruled in this wise:

"Clearly, the service of design and engineering, supply and delivery, construction, erection and installation, supervision, direction and control of testing and commissioning, coordination. . ." of two projects involved two taxing jurisdictions. These acts occurred in two countries — Japan and the Philippines. While the construction and installation work were completed within the Philippines, the evidence is clear that some pieces of equipment and supplies were completely designed and engineered in Japan. The two sets of ship unloader and loader, the boats and mobile equipment of the NDC project and ammonia storage tanks and refrigeration units were made and completed in Japan. They were already finished products when shipped to the Philippines. The other construction supplies listed under the offshore portion such as the steel sheets, pipes and structures, electrical and instrumental apparatus, these were not finished products when shipped to the Philippines. They, however, were likewise fabricated and manufactured by the sub-contractors in Japan. All services for the design, fabrication, engineering and manufacture of the materials and equipment under Japanese Yen Portion I were made and

[1] G.R. No. 1-37377, 18 December 2001.

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completed in Japan. ***These services were rendered outside the taxing jurisdiction of the Philippines and are therefore not subject to contractor's tax.*** " (Emphasis and underscoring supplied)

Such being the case and since the subject services are rendered by SIL outside the Philippines, the service fees to be paid therefor by BPI to SIL are exempt from income tax and consequently from withholding tax.[2]

With respect to value-added tax (VAT), payments for the sale or exchange of services, including the use or lease of properties are subject to VAT only if the services are performed in the Philippines. Section 108 (A) of the Tax Code of 1997, as amended, provides that:

> *"SEC. 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. . .*" (Emphasis and underscoring supplied)

Accordingly, since the services are performed by SIL outside the Philippines, the service fees to be paid therefor by BPI are likewise exempt from VAT.[3]

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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[2] BIR Ruling 068-2013 dated February 18, 2013.
[3] *Ibid.*