REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

P.D. 1869; 109; 27
BIR Ruling No. 359-17
632-2017
12-19-2017

SANTOS VERDE SAN JUAN AND ASSOCIATES
SVS Suite, 65E Scout Borromeo St., South Triangle,
Quezon City

Attention : **Florita B. Santos**
Certified Public Accountant

Gentlemen:

This refers to your letter dated September 8, 2017, requesting on behalf of your client, **Millennium Pan-Asia Hotel and Resort, Inc.** ("MPAHR" for brevity), for confirmation of your opinion that:

1. The income that will be derived by MPAHR, a Licensee of the **Philippine Amusement and Gaming Corporation** (PAGCOR), is subject to 5% franchise tax, in lieu of all taxes, in accordance with Section 13(2)(b) of Presidential Decree (PD) No. 1869, as amended;

2. All domestic purchases of goods and services directly related to the design, construction, installation, operations and maintenance covered by the license grant shall not be subject to 12% VAT on the ground of the exemption from all taxes pursuant to Section 13 (2)(b) of PD No. 1869, as amended. Stated otherwise, no VAT shall be passed on to the Company with respect to its domestic purchase of goods and services that is directly related to its gaming operation; and

   All importation of goods and services by MPAHR of equipment, paraphernalia, construction materials, professional services for the sole and exclusive use of the casino operation and for the proper and efficient management and administration thereof shall be exempt from the payment of all kinds of customs duties, taxes and other imports, including all kinds of fees, levies or charges of any kind of nature, whether National or Local pursuant to Section 13 (1) of PD No. 1869, as amended.

<u>Background</u>

MPAHR, with Tax Identification Number , is a corporation duly organized under the laws of the Philippines, registered with the Securities and Exchange Commission (SEC) under Registration No. and is primarily engaged in the management and operation of hotels, resorts, and recreational activities.

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On August 9, 2017, PAGCOR issued a Provisional License in favor of MPAHR for the development and construction of a resort-casino within C. Seno St. corner Quano Avenue, North Reclamation Area, Mandaue City, Cebu, which covers a total of approximately 4.5 hectares, and to establish and operate the Casino in the said site; the entire development of the resort-casino shall have a total gross floor area of at least seventy five thousand square meters (75,000 sq.m.); the key concept of the Master Development Plan for the Project approved by PAGCOR comprises the following:

	Project Components:
1	4-star Hotel, 5-star Hotel
2	Casino
3	Retail/Shopping Mall
4	Indoor Water Park
5	Performance Art Theater/Cinema
6	Entertainment Outlets/Restaurants/Nightclub

that PAGCOR through the Provisional License issued and in the exercise of its regulatory and licensing authority under the PAGCOR Charter granted to MPAHR the License to establish and operate the Casino for both local and foreign patrons who are at least 21 years of age; and that PAGCOR shall issue the Regular Casino Gaming License upon completion of the Project and upon approval by PAGCOR of the report detailing the actual total project cost to ensure MPAHR's compliance with the approved project cost based on the Project Implementation Plan.

In reply, please be informed that Section 13(2)(b) of P.D. No. 1869, as amended by RA 9487, provides, viz:

"SEC. 13. <u>Exemptions.</u> –

(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, **<u>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</u>**

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<u>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.</u>" (Emphasis supplied)

Furthermore, in the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, (G.R. No. 212530 dated August 10, 2016)*, 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:

> "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.
>
> For the same reasons that made us conclude in the December 10, 2014 Decision of the Court sitting En Banc in *G.R. No. 215427* that <u>PAGCOR is subject to corporate income tax for "other related services", we find it logical that its contractees and licensees shall likewise pay corporate income tax for income derived from such "related services".</u>
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> xxx xxx xxx
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> 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." (Emphasis supplied)

With regard to the VAT exemption of MPAHR, 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:
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> 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;" (Emphasis supplied)

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Thus, PAGCOR and its licensees and contractees are exempt from the payment of VAT because PAGCOR's charter, PD 1869, is a special law that grants the latter exemption from taxes and such exemptions extend or inure to the benefit of its licensees and contractees. *(Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, G.R. No. 172087 dated March 15, 2011)*

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

1. Since MPAHR 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 MPAHR pursuant to Section 13(2)(b) of PD 1869, as amended. Therefore, the income derived by MPAHR from its operation of the Casino, is subject only to the 5% franchise tax, and shall be exempted from the 30% 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 30% corporate income tax. *(Section 14(5) of Presidential Decree No. 1869, as amended.) (BIR Ruling No. 359-17 dated August 9, 2017)*

2. All domestic purchases of goods and services and importations made by MPAHR directly related to its gaming operation 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. Hence, no VAT shall be passed on to MPAHR with respect to its domestic purchase of goods and services that is directly related to its gaming operation as described in the first paragraph. *(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)*

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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