REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Sections 23 (F), 28 (B) (1), 42 (A) (3), (A) (4), (C) (3), and 108 (A) (3) of the National Internal Revenue Code of 1997, as amended;
OT-004-2025
JAN 06 2025

PUNONGBAYAN AND ARAULLO
19th and 20th Floors, Tower I
The Enterprise Center
6766 Ayala Avenue, 1200 Makati City

Attention: **ATTY. ELEANOR L. ROQUE**
Head, Tax Advisory and Compliance

Gentlemen:

This refers to your request for a ruling confirming that technical fees paid made by ***Accor Advantage Plus Philippines, Inc. ("AAPPI")*** to ***Allegiance Marketing Pty. Limited ("AMPL")*** pursuant to a Technical Services Agreement, are not subject to income tax, withholding tax, and value-added tax ("VAT") as it was made in consideration of the key technical services rendered outside the Philippines in accordance with Section 28 (B) (1) and 42 (C) (3) of the National Internal Revenue Code of 1997, as amended ***("Tax Code")***.

Background

1. AAPPI, a domestic corporation existing and established under Philippine laws and with principal address at Sofitel Philippine Plaza, CCP Complex, Roxas Boulevard, Pasay City 1300, is a company engaged in the business of telemarketing of a membership program for dining and accommodation benefits of its member hotels.

2. AMPL, a non-resident foreign corporation organized and existing under the laws of Australia, is engaged in the sale and management of membership program offered by AAPC Limited, a group of companies where AAPPI and AMPL are members.

3. AAPPI entered into a Technical Services Agreement with AMPL on January 1, 2012 whereby the latter will provide key technical services in support of the former's operation, to wit:

   a. Telecommunication equipment maintenance and ongoing support;
   b. Maintaining IT Help Desk Support for general and network services;
   c. Maintaining GP and FRX Accounting Software Support;

d. Maintain All Mark member database software technical support; and
e. IT Management Support, Project Management, and General Administration.

4. Under the said Agreement, all services rendered by AMPL for AAPPI shall be performed in its entirety in Australia via remote access. It was further agreed that in no case would there be an employee who will be sent to the Philippines or travel outside Australia to render services pursuant to the said Agreement.

5. In consideration of the key technical services to be rendered for AAPPI, it was agreed that AMPL will be paid by the former annual technical fees in the amount of AUD to be invoiced on a biannual basis. This was later agreed to be increased to AUD as stated in the cover letter dated March 18, 2013.

6. The *"Certification of Non Rendition of Services in the Philippine Territory"* dated March 21, 2023 submitted by AMPL shows that the services rendered in Australia include: (1) Software/Database Support and (2) Project Management, IT, and Telecommunication Support.

7. AAPPI claims that the payments made for the key technical services provided by AMPL pursuant to the aforementioned Agreement are not subject to income tax, withholding tax, and VAT for being rendered outside the Philippines.

Hence, this request.

In reply, please be informed as follows:

Sections 23 (F) and 28 (B) of the Tax Code provide:

> *"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 supplied)
>
> *xxx xxx xxx*
>
> *"SEC. 28. Rates of Income Tax on Foreign Corporations.* —
>
> *xxx xxx xxx*
>
> *(B)* Tax on Non-resident Foreign Corporation. –
>
> (1) In General. – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year ***from all sources within the Philippines*** xxx...xxx. Provided, that effective January 1, 2009, ***the rate of income tax shall be thirty percent (30%).***[1]" (Emphasis supplied)

[1] This was reduced to twenty-five percent (25%) by Republic Act No. 11534 starting January 1, 2020

In relation to the previously cited provisions, Section 42 (A) (3) and (C) (3) of the Tax Code states that compensation for labor or personal services is derived from sources within the Philippines if the services are performed therein, and outside if the services are performed outside 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; (Emphasis supplied)

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 supplied)

In accordance with the aforementioned provisions, non-resident foreign corporations are subject to income tax only on income derived from all sources within the Philippines. Conversely, they are not subject to income tax on income derived from sources outside the Philippines. The services claimed to be exempted must be of a nature that can be reasonably performed abroad.

The submitted "*Certification of Non Rendition of Services in the Philippine Territory*" shows that the services rendered in Australia include: (1) Software/Database Support and (2) Project Management, IT, and Telecommunication Support. Although these services can be reasonably performed abroad with the continuing emergence of the Business Process Outsourcing and Information Technology, the completion or delivery of said services relies upon the supply of technical knowledge or information involving interests in properties or facilities located in the Philippines which are considered royalties under the Tax Code and thus subject to applicable taxes.

Section 42 (A) (4) (c) of the Tax Code provides that royalties for ***"the supply of scientific, technical, industrial or commercial knowledge or information"*** are treated as gross income from sources within the Philippines; hence, it is subject to Philippine income tax at a rate of thirty percent (30%) of the gross income received during each taxable year from all sources within the Philippines in accordance with Section 28 (B) (1) of the same Code.

Applying the foregoing discussions, AMPL, though a non-resident foreign corporation, the technical fees paid to it by AAPPI for services involving ***"the supply of technical knowledge or information"*** constitute income derived from sources within the Philippines; hence, the same are subject to income tax, and consequently, to the withholding tax.

On the other hand, Section 108 (A) of the Tax Code clearly reads that the sale or exchange of services subject to VAT include only those services that are performed in the Philippines, *viz.*:

> "**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...... The phrase 'sale or exchange of services' shall likewise include:***
>
> *xxxx xxxx xxxx*
>
> ***(3) The supply of scientific, technical, industrial, or commercial knowledge or information;*** (Emphasis supplied)
>
> *xxxx xxxx xxxx*"

Accordingly, the technical fees paid by the AAPPI to AMPL, which are considered as gross income from sources within the Philippines, are subject to VAT equivalent to 12% of gross receipts derived from the sale or exchange of service.

IN VIEW OF THE FOREGOING, this Office hereby states that the technical fees paid by AAPPI for services involving the supply of technical knowledge or information, are subject to Philippine income tax, withholding tax, and VAT.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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SIGN HERE