REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RA 7916; RR No. 2-98
BIR Ruling No. 568-17
OT-0443-2020

AUG 17 2020

PRIMARY PROPERTIES CORPORATION
Suite 303, 3F i2 Bldg., Asiatown IT Park
Apas, Cebu City

Attention: **William Christopher U. Liu, Jr.**
President

Gentlemen:

This refers to your letter dated July 2, 2018, requesting confirmation that the sale of a factory building (Factory Unit No. 8 or PPC 8) by PRIMARY PROPERTIES CORPORATION (''PPC" for brevity), a PEZA-registered Facilities Enterprise to another PEZA-registered Export Enterprise, NKC MANUFACTURING PHILIPPINES CORPORATION ("NKC" for brevity), is (i) subject to five percent (5%) special tax incentive pursuant to the Special Economic Zone Act of 1995 (Republic Act [RA] No. 7916); (ii) not subject to value-added tax (VAT) and documentary stamp tax (DST); and (iii) exempt from the creditable withholding tax (CWT).

Factual Background:

PPC, formerly Primary Industrial Properties Corp., is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Suite 303, 3F i2 Bldg., Asiatown IT Park, Apas, Cebu City. It is duly registered with the Securities and Exchange Commission (SEC) under Company Registration Number [redacted]. Its primary purpose is to acquire, by purchase or lease or otherwise, lands and interests in lands or buildings or improvements in said lands, and to own, hold, improve, develop and manage any real state so acquired. It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) [redacted].

PPC is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Facilities Enterprise under PEZA Certificate of Registration No. [redacted] dated March 25, 1994. The Company's original registration with PEZA was subsequently amended for every additional or expansion project that the company undertook. One of such expansions refer to the construction of three (3) storey factory buildings at the Mactan Economic Zone II – Special Economic (MEZ II - SEZ). This amendment is covered by a Fourth Supplemental Agreement with PEZA dated March

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6, 2000, such supplemental agreement forming an integral part of the original contract. Under the subject Supplemental Agreement, PPC's expansion project shall be entitled to the following incentive – exemption from national and local taxes, and in lieu thereof, payment of five percent (5%) on gross income earned in accordance with Section 24 of RA No. 7916, as amended, and its implementing rules, subject to the setting up of separate books of accounts for the said projects. Subsequently, the PEZA and the Company entered into a Restatement of Supplemental Agreement dated March 6, 2000 whereby PEZA approved PPC's request for amendment to reflect the three (3) factory building's correct number of storeys, actual gross floor area, and specific locations. Under the subject Restatement, the gross floor area of PPC 8 has been amended from 8,300 square meters (as indicated in the March 6, 2000 Supplemental Agreement) to its actual area of 6,049 square meters.

On the other hand, NKC is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at the Mactan Economic Zone II-, Lapu-lapu City. It is duly registered with the Securities and Exchange Commission (SEC) under Company Registration No. . Its purpose is to engage in, operate, conduct and maintain the business of manufacturing, importing, exporting, buying, selling or otherwise dealing in, at wholesale such goods as parts for roller bearings, conveyor systems, sash rollers, rubber seals, metal core plates, automotive parts and components, radial retainer, die parts of metal retainer and other miscellaneous parts and goods of similar nature. It is registered with the BIR with TIN , as well as with the PEZA as an Export Enterprise under PEZA Certificate of Registration No. .

On June 19, 2018, a Deed of Absolute Sale was executed between PPC and NKC for the sale of a factory building (Factory Unit No. 8 or PPC 8) located in Mactan Economic Zone 2, Lapu-lapu City. The factory building has a total floor area of six thousand forty nine square meters (6,049) and is covered by Tax Declaration No. issued by the Lapu-lapu City Assessor's Office. The subject factory unit is one of the 3 factory buildings subject of the Company's Fourth Supplemental Agreement with PEZA and the subsequent Restatement of Supplemental Agreement. Prior to the sale, PEZA issued Letter of Authority No. dated September 4, 2017 approving PPC's request to sell the subject factory building in favor of NKC.

In reply, please be informed that PEZA-registered enterprises are exempt from paying all local and national taxes and, in lieu thereof, are only subject to the 5% special tax on gross income, to be distributed in accordance with Section 24 of RA No. 7916, to wit:

> "**SEC. 24. Exemption from National and Local Taxes** — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;

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(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

xxx xxx xxx"

Based on the foregoing, since the factory unit is one of the 3 factory buildings subject of the PPC's Fourth Supplemental Agreement with PEZA and the subsequent Restatement of Supplemental Agreement, the sale thereof by PPC to NKC is covered by the 5% special tax on gross income. Accordingly, the aforesaid sale is no longer subject to VAT and DST. As to the CWT, Section 2.57.5(B)(2) of Revenue Regulations (RR) No. 2-98, as amended, provides:

> "SECTION 2.57.5. Exemption from Withholding. – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx xxx
>
> (2) Corporations registered with the Board of Investments, **Philippine Export Processing Zones** and Subic Bay Metropolitan Authority enjoying exemption from the income tax pursuant to EO 226, as amended, Republic Act No. 7916 and the Omnibus Investments Code of 1987 and RA 7227, as amended, respectively;" (Underscoring supplied)

Based thereon, it is clear that the creditable withholding tax does not apply to income payments to persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special. Accordingly, since PPC is an enterprise enjoying exemption from the payment of income tax pursuant to RA No. 7916, its revenues derived directly in connection with its registered activity as Ecozone Facilities Enterprise, shall not be subject to the CWT prescribed under RR No. 2-98, as amended.

It should be understood that PPC shall be constituted as a withholding agent for the government if it acts as employer and any of its employees received compensation income subject to compensation withholding tax, or if it makes payments to individuals or corporations subject to the withholding taxes at source as required under Chapter XIII and Section 57 of the Tax Code of 1997, as amended and implemented by RR No. 2-98, as amended.

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Pursuant to Section 4 of Republic Act (RA) No. 10708[1], PPC is required to file its tax returns and pay its tax liabilities, on or before the deadline as provided under the 1997 Tax Code, as amended, using the electronic system for filing and payment of taxes of the BIR. Furthermore, it shall file with PEZA a complete annual tax incentives report of its income-based tax incentives, VAT and duty exemptions, deductions, credits or exclusions from the tax base, as may be provided under RA No. 7916, within thirty (30) days from the deadline for filing of tax returns and payment of taxes.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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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[1] An Act Enhancing Transparency in the Management and Accounting of Tax Incentives Administered by Investment Promotion Agencies.