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 National Internal Revenue Code of 1997, as amended
BIR Ruling No. 068-2013
VAT-0333-2020

JUN 16 2020

SYCIP GORRES VELAYO & CO.
6760 Ayala Avenue
1226 Makati City

Attention: **ATTY. JULES E. RIEGO**
Principal, Tax Advisory and Advocacy Group

Gentlemen:

This refers to your letter dated January 18, 2013 requesting on behalf of your client, **Newrest Group International S.A.S ("NGI" for brevity)** for confirmation of your opinion that service fees to be received by NGI for consultancy services to be rendered outside the Philippines is not subject to Philippine income tax and consequently to withholding tax as well as the twelve percent (12%) value added tax (VAT).

Background:

NGI is a non-resident foreign corporation organized and existing under the laws of France with business address at with registration number F . It is engaged in the business of operation of management and operation of canteens, restaurants, and catering services as well as in research and consultancy relating to the supply chain, management and operation of food and beverage distribution, and food handling safety, among others.

On December 17, 2012, NGI executed a Consultancy Agreement with the following local companies (collectively referred to herein as the "Companies") which are engaged in the business of rendering integrated on-shore and off-shore manpower supply, logistics and support services to the oil and gas companies in the Philippines:

1. Supply Oilfield & Marine Personnel Services, Inc.
2. Supply Oilfield Services, Inc.
3. SOS Transport & Logistics, Inc.
4. SOS Marine & Environmental Services, Inc.
5. Supply Oilfield Services (Subic), Inc.
6. Oilfield Institute of Learning in Asia (Oil-Asia), Inc.

The Consultancy Agreement is for the provision of the following services:

1. Provide advice on the development and implementation of business strategy, techniques and negotiation of commercial agreements;
2. Advice on industry best practices;
3. Evaluate the qualifications and experience of key staff for recruitment and on-line conduct of applicants' interview;
4. Assist in the formulation of policies relating to compensation, pensions and other employee benefits;
5. Assist in the secondment of employees between group companies;

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6. Assist in the negotiation and formulation of any agreement involving international transactions;
7. Assist in the handling of international disputes and procedures before international courts or arbitration proceedings;
8. Provide international marketing support services including the review of marketing strategy; and
9. Assist in the encouragement of internal communications despite the Group newsletter and Internet.

Under the terms of the Consultancy Agreement, NGI will render the above-enumerated services outside the Philippines. For the services rendered, NGI shall receive service fees based on actual cost of man-hours spent by NGI staff for said services which shall be paid on the basis of separate invoices issued to each of the Companies, corresponding to their respective parts in the service fees.

In reply, please be informed that under Section 23 (F) of the National Internal Revenue Code of 1997, as amended, a foreign corporation, like NGI, 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:

> *"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 National Internal Revenue 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 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, the service fees to be paid by the Companies for the services rendered by NGI outside the Philippines are exempt from income tax and consequently from withholding tax. ***(BIR Ruling 068-2013 dated February 18, 2013)***

With respect to 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 National Internal Revenue 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 ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, that the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006*[2]*, raise the rate of value-added tax to twelve percent (12%). . .*
>
> *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)

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

[2] The VAT rate was increased to 12 percent beginning February 1, 2006, in accordance with the Memorandum of the Executive Secretary to the Secretary of Finance dated January 31, 2006, as circularized by Revenue Memorandum Circular No. 7-2006 (Publishing the Full Text of the Memorandum from Executive Secretary Eduardo R. Ermita dated January 31, 2006. Approving the Recommendation of the Secretary of Finance to Increase the Value Added Tax Rate from Ten Percent to Twelve Percent) dated January 31, 2006.

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Accordingly, the service fees to be paid by the Companies for the services performed by NGI outside the Philippines are likewise exempt from VAT. ***(BIR Ruling 068-2013 dated February 18, 2013)***

This ruling being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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