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

Law Div

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RA 8756 ; Secs. 28A(6)(a) and 109 (1)(J) of the Tax Code, as amended
BIR Ruling No. 449-2013;
579-2018
3/16/2018

BUREAU OF INTERNAL REVENUE
RECEIVED
16 MAR 2018
LAW DIVISION

MAKITA CO., INC. REPRESENTATIVE OFFICE
4335 Dayap corner Filmore Street
Palanan, Makati City 1235

Attention: **Ms. ROSCEL A. MAKITA**
Resident Agent

Gentlemen:

This refers to your letter dated April 21, 2017 requesting for Certificate of Value-Added Tax (VAT) exemption.

It is represented that **MAKITA CO., INC. PHIL REPRESENTATIVE OFFICE ("MAKITA"**, for brevity) is a foreign company organized and existing under the laws of Japan and duly licensed by the Securities and Exchange Commission under SEC Registration No. [redacted] which function is to act as a Messenger/Communication Center between Japan and Philippine Office. As a Messenger Center, MAKITA is to serve as a buying office for all the requirements of Japan Head Office and buys Philippine Products and ships all the goods purchased to Japan for resale.

In reply, please be informed that Republic Act (RA) No. 8756[1] provides the following as regards the licensing of Regional or Area Headquarters:

"Chapter I

LICENSING OF REGIONAL OR AREA HEADQUARTERS

Art. 58. Qualification of Regional or Area Headquarters.- Any foreign business entity formed, organized and existing under any laws other than those of the Philippines, whose purpose, as expressed in its organizational documents or by resolution of its Board of Directors or its equivalent, is to supervise, superintend, inspect or coordinate its own affiliates, subsidiaries or branches in the Asia-Pacific Region and other foreign markets may establish a regional or area headquarters in the Philippines, by securing a license therefor from the Securities and Exchange Commission, upon the favorable recommendation of the Board of Investments.

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[1] *AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.*

> *The Securities and Exchange Commission shall, within thirty (30) days from the effectivity of this Code, issue the implementing rules and regulations. The following minimum requirements shall, however, be complied with by the said foreign entity:" (emphasis supplied)*

In relation to this, Sec. 28 (A) (6) and Sec. 109 (1) (J) of the Tax Code of 1997, as amended, provide tax exemptions to regional or area headquarters, to wit:

> *"Sec. 28. Rates of Income Tax on Foreign Corporations.*
>
> *A. Tax on Resident Foreign Corporations.*
>
> *xxx xxx xxx*
>
> *(6) Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies.-*
>
> *(a) Regional or area headquarters as defined in Section 22 (DD)[2] shall not be subject to income tax.*
>
> *xxx xxx xxx"*
>
> *"Sec. 109. Exempt Transactions*
>
> *(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.*
>
> *xxx xxx xxx*
>
> *(J) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines."*

Clearly, the above-quoted provisions are tax exemptions given to regional or area headquarters and do not grant the same to a representative office as in the case of MAKITA. It is apparent that the tax code provisions, granting exemption from income tax and VAT, is limited to regional or area headquarters. (*BIR Ruling No. 449-2013 dated November 27, 2013*)

It should be remembered that laws and statutes granting tax exemptions are strictly construed against the taxpayer. Exemptions are never presumed and the burden is upon the taxpayer to establish his right to exemption beyond reasonable doubt[3]. In the case of *Mactan Cebu International Airport Authority v. Marcos*[4] , the Supreme Court held:

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[2] a branch established in the Philippines by multinational companies and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets.
[3] Dimaampao, Japar B., Tax Principles and Remedies, Second Edition (2005)
[4] G.R. No. 120082, 11 September 1996, 261 SCRA 667

"Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception."

In view of the foregoing, the request for certification that as a representative office, MAKITA CO., INC. PHIL. REPRESENTATIVE OFFICE is a value-added tax (VAT)-exempt taxpayer, is hereby denied for lack of legal basis.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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