Republic Act No. 9153 and its IRR; Executive Order No. 226, as amended, Revenue Regulations No. 2-98, as amended,	
BIR Ruling No. 404-2019	
OT- 441-2022	
DEC 14 2022	

EDC BURGOS WIND POWER CORPORATION
6th Floor, Rockwell Business Center
Tower 3, Ortigas Avenue
Pasig City, 1604, Philippines

Attention: **MARIBEL A. MANLAPAZ**
Vice President/Comptroller

Gentlemen:

This refers to your request on behalf of EDC Burgos Wind Power Corporation ("**EDC**") for confirmation whether the: (1) income it derived from its registered activity (sale of electricity) during its Income Tax Holiday ("**ITH**") entitlement period (the "**ITH Period**"); and (2) all FIT (Feed-in-Tariff) rate adjustment billings pertaining to said ITH Period (the "**FIT Billings**"), which were received after the expiration of the ITH Period, are not subject to income tax and expanded withholding tax ("**EWT**").

Background:

1. EDC (Taxpayer's Identification Number: 007-726-294-000)[1] is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and registered with the: (a) Department of Energy ("**DOE**") under Certificate of Registration No. WESC 2009-09-004;[2] and (b) Board of Investments ("**BOI**") under BOI Registration No. 2011-135,[3] as a renewable energy ("**RE**") developer of a 150-megawatt Wind Energy Power Generation Project in Burgos, Ilocos Norte, Philippines ("**Burgos Wind Project**").

gu

[1] Per Certificate of Registration issued by the Bureau of Internal Revenue on April 28, 2010.
[2] Per Certificate of Registration issued by the Department of Energy dated February 4, 2011.
[3] Per Certificate of Registration issued by the Board of Investments dated June 29, 2011.

2. EDC enjoys ITH incentive for seven (7) years from **November 11, 2014 to November 10, 2021**[4] pursuant to Section 15(a) of Republic Act ("**RA**") No. 9513, or the Renewable Energy Act.[5]

3. EDC is also a participant in the FIT System, as evidenced by its Certificate of Compliance No. 19-12-M-00005L issued by the Energy Regulatory Commission ("**ERC**") on December 3, 2019, hence, it is entitled to a FIT, which is a guaranteed payment in Philippine Peso per kilowatt hour for electricity generated from emerging RE technologies and actually delivered to the transmission and/or distribution network. The FIT is subject to adjustment due to inflation and foreign exchange.

4. The FIT is disbursed to RE developers with eligible plants by the National Transmission Corporation ("**TransCo**"), which is the administrator of the fund established for the FIT allowance collected from electricity consumers.

5. On May 26, 2020, the ERC issued ERC Resolution No. 6, series of 2020[6] (the "**FIT Adjustment Resolution**") approving and adopting an adjustment to the FIT for the years 2016, 2017, 2018, 2019 and 2020, with recovery in arrears over a period of five (5) years. Thus, the adjusted/escalated FIT rate for the years 2016 to 2020 can only be recovered after the effectivity of the FIT Adjustment Resolution and in accordance with the rules of the ERC.

6. On January 18, 2021, ERC, through a clarificatory letter dated December 20, 2020, advised FIT participants that the billing adjustment shall be done sequentially, one billing month per payment date, starting with the January 2016 generation, as follows:

Entrant	Period of Generation	Billing Schedule
2015	January 2016	December 2020
	February 2016-December 2016	January 2021-November 2021
2015-2016	January 2017-December 2017	December 2021-November 2022
2015-2017	January 2018-December 2018	December 2022 – November 2023
2015-2018	January 2019-December 2019	December 2023-November 2024
2015-2019	January 2019-November 2020	December 2024-November 2025

The billing schedule will continue for the succeeding five (5) years until the FIT adjustment is fully recovered, including all FIT adjustments pertaining to the ITH Period.

7. Starting January 2021, EDC began billing TransCo for the following: (a) regular electricity generation billings; and (b) FIT rate adjustment billings, for the FIT rate adjustment recovery (collectively, the "**Payments**").

8. During the ITH Period, TransCo did not withhold EWT on the Payments. However, starting on EDC's billings dated November 15, 2021, or after the expiration of the ITH Period, TransCo began withholding EWT on the following Payments, citing Section

[4] Per Certificate of Income Tax Holiday Entitlement issued by the Board of Investments (For Taxable Year 2020) on February 22, 2021.
[5] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, December 16, 2008.
[6] A Resolution Approving the Adjustment to the Feed-In Tariff (FIT), May 26, 2020.

2.57.4 of Revenue Regulations ("**RR**") No. 2-98, as amended, which states that "[t]he obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first," with the term 'payable' referring to the date the obligation becomes due, demandable or legally enforceable."

In reply, please be informed that Section 2.57.5 of RR No. 2-98, as amended by RR No. 6-2001 implementing Section 57(B) of the National Internal Revenue Code of 1997, as amended ("**Tax Code**"), provides that income payments made to corporations who are enjoying exemption from payment of income taxes pursuant to provisions of any law, whether general or special, shall be exempt from withholding tax, to *wit:*[7]

> *"Sec. 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 duly registered with the Board of Investments, Philippine Export Processing Zones and Subic Bay Metropolitan Authority enjoying exemption from the income tax pursuant to E.O. 226, as amended, R.A. 7916 and the Omnibus Investment Code of 1987 and R.A. 7227, as amended, respectively;"* (Emphases and Underscoring supplied)

A careful review of the above provision shows that the "income" exempt from withholding taxes pertains to income generated by a corporation within the period it is actually enjoying exemption from payment of income taxes. Thus, regardless when such income is actually received by a corporation, as long as the same is generated within the period a corporation is enjoying income tax exemption, such income shall be exempt from withholding tax.[8]

It is a well-settled rule that where the law does not distinguish, neither should we distinguish.[9] Also, a cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. [10] As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the

---

[7] BIR Ruling No. 334-2011 dated September 7, 2011.
[8] BIR Ruling No. 404-2019 dated July 23, 2019; BIR Ruling No. 399-2018 dated March 9, 2018; BIR Ruling No. 417-2015 dated December 15, 2015.
[9] BIR Ruling No. OT-013-2022, January 14, 2022.
[10] *Cynthia S. Bolos v. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.

gu

plain-meaning rule or *verba legis*. Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure.

In the instant case, documents show that EDC: (1) is registered with the DOE and BOI as an RE developer of the Burgos Wind Project; and (2) was granted an incentive of ITH for seven years or from November 11, 2014 to November 10, 2021. Such being the case, this Office confirms that all income payments received or to be received by EDC relating to transactions occurred during the ITH Period or from November 11, 2014 to November 10, 2021 in connection with the Burgos Wind Project are exempt from income tax, and consequently, from withholding tax. It bears emphasis, however, that the said exemption covers those income that is directly attributable to the revenues generated from sales of electricity.[11]

With regard to the FIT Billings of EDC to TransCo, please note that the Feed-in Tariff refers to a renewable energy policy that offers guaranteed payments on a fixed rate per kilowatt-hour for emerging renewable energy sources, excluding any generation for own use.[12] This policy was adopted to accelerate the development of emerging RE resources through a fixed tariff mechanism. The FIT system is mandated for wind, solar, ocean, run-of-river hydropower, and biomass energy resources. ERC is the government agency directed to formulate and promulgate FIT system rules. In addition, ERC is obliged to adjust the FIT annually for the entire period of its applicability to allow pass-through of local inflation and foreign exchange rate variations.

Considering the nature of FIT rate adjustments, it is indisputable that the same is considered income on the part of participating RE developers that is directly attributable to the revenues generated from sale of electricity.

Having all these in regard, it appears that the contention of TransCo that it should withhold EWT on the FIT Billings albeit paid after November 10, 2021 (the expiration of the ITH Period) citing Section 4 of RR No. 12-2001, amending Section 2.57.4 of RR No. 2-98 is bereft with merit since, as thoroughly discussed above, the said FIT Billings are exempt from withholding tax pursuant to Section 2.57.5 of RR No. 2-98, as amended. It must be emphasized that Section 2.57.4 of RR No. 2-98 refers to the time of withholding of taxes on transactions that are subject to (not exempt from) withholding taxes under Section 2.57 of RR No. 2-98, as amended.

Please note that ITH and FIT are some of the incentives given by the government to encourage RE developers to develop and utilize the renewable energy resources in the country. Hence, all doubts concerning the benefits and incentives granted to enterprises and investors by E.O. No. 226, as amended, shall be resolved in favor of the investors and registered enterprises.[13]

As we have consistently ruled, it the statutory purpose is clear, the provisions of the law should be construed so as not to defeat but to carry out such end and purpose. For a statute derives its vitality from the purpose for which it is enacted and to construe it in a manner that

[11] BIR Ruling No. 399-2018, March 9, 2018.

[12] DOE Circular No. DC2009-05-0008, Rules and Regulations Implementing Republic Act No. 9513 (Renewable Energy Act of 2008), May 25, 2009; ERC Resolution No. 16, series of 2010, Resolution Adopting the Feed-in-Tariff Rules, July 12, 2010.

[13] Article 79 of EO No. 226; *Pilipinas Kao, Inc. v. The Honorable Court of Appeals and Board of Investments*, G.R. No. 105014, December 18, 2001.

disregards or defeats such purpose is to nullify or destroy the law. An administrative agency may not enlarge, alter or restrict the provisions of the statute being administered. It may not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature.

This ruling is 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,

LARRY M. BARCELO
Assistant Commissioner – Legal Service
RDAO No. 2-2020
00010238

K-1