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

Sections 105, 108 (B) (2) of the NIRC of 1997, as amended		VAT-0338-2020

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36 / 927-09-63

Date: JUN 19 2020

MARIC GLOBAL MARKETING CORPORATION
Unit 2J, Unique Plaza Bldg., 56 Sierra Madre St.,
Brgy. Highway Hills, Madaluyong City

Attention: **MARIANO P. EVANGELISTA**
President

Gentlemen:

This refers to your letters dated June 21, 2016 and March 21, 2017, requesting on behalf of MARIC Global Marketing Corporation ("MGMC" for brevity), for the issuance of a ruling that commissions received by MGMC for its services rendered to non-resident clients are subject to zero percent (0%) value-added tax (VAT) pursuant to Section 108 (B) (2) of the National Internal Revenue Code of 1997, as amended.

It is represented that MGMC, with Tax Identification Number (TIN) [redacted] is a stock corporation duly organized under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC), bearing SEC Registration No. [redacted], dated June 30, 2015; that it is a VAT-registered entity; that the primary purpose for which it was established, as provided in its Amended Articles of Incorporation, is *"to engage in the importation and export of merchandize goods for wholesale and commission trading"*; that its primary activities arise from Indent Orders whereby it receives commission from foreign suppliers (LS Cable & System (M) Sdn. Bhd. and PT. Tembaga Mulia Semanan Tbk.); and that the commission amount is payment for its services as middleman between the Sellers (non-residents, residing in foreign countries) and Buyer (local companies).

In reply, please be informed that under Section 105 of the National Internal Revenue Code of 1997, as amended, it is provided that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the same Code. The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

Relative to the above provision, Section 108 (A) of the National Internal Revenue Code of 1997, as amended, in providing the test for the applicability of VAT on sale of services, clarifies that 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. The said Section provides, 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 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,[1] 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. . ."

Moreover, Section 4.108-5 of Revenue Regulations (RR) No. 16-2005, implementing Section 108 (B) of the National Internal Revenue Code of 1997, as amended, provides for the transactions which are subject to the 0% VAT, to wit:

"SEC. 4.108-5. Zero-Rated Sale of Services. —

(a) In general. - A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.

(b) Transactions Subject to Zero Percent (0%) VAT Rate. - The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx xxx

(2) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;

xxx xxx xxx"

In the case of CIR vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.[2] the Supreme Court emphasized that certain requisites must be complied with in order that the services may qualify for VAT zero-rating under Section 102 (b) (2) [now Section 108 (B) (2) of the National Internal Revenue Code of 1997, as amended], viz.:

1. The services must be performed in the Philippines;
2. The services must be rendered to persons engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who are outside the Philippines when the services are performed; and

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[1] 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.

[2] G.R. No. 153205, Jan. 22, 2007,

3. The fees to be paid are in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

It is noted, however, that the Bank Certifications[3] submitted do not show the commission fees remitted by LS Cable & System (M) Sdn. Bhd. and PT. Tembaga Mulia Semanan Tbk. as payment to MGMC for services rendered. The said Certifications are only evidence of foreign currency accounts and no indication of payments made by its non-resident clients in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. Hence, the third (3rd) requisite in order that the services of MGMC may qualify for VAT zero-rating under Section 108 (B) (2) of the National Internal Revenue Code of 1997, as amended, has not been met.

Accordingly, your request for the issuance of a ruling that commissions received by MGMC for its services rendered to non-resident clients are subject to zero percent (0%) value-added tax (VAT) pursuant to Section 108 (B) (2) of the National Internal Revenue Code of 1997, as amended is hereby denied for lack of legal and factual basis. Thus, the commissions received by MGMC for its services rendered to non-resident clients are subject to twelve percent (12%) VAT pursuant to Section 108 (A) of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[3] Certifications of East West Banking Corporation and Metropolitan Bank & Trust Company