REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 28(B)(1); 114(C); RR 2-98; RR 4-07
BIR Ruling No. 015-10
#306-2017
6-14-2017

METALS INDUSTRY RESEARCH & DEVELOPMENT CENTER
DEPARTMENT OF SCIENCE & TECHNOLOGY
MIRDC Compound, Gen. Santos Avenue
Bicutan, Taguig City

Attention: **Mr. Robert O. Dizon**
Assistant Secretary, DOST and
Officer-In-Charge

Gentlemen:

This refers to your letter dated March 5, 2015 requesting clarification on whether or not the sale of goods to a government agency by a non-resident foreign corporation is subject to the final value-added tax (VAT) and final income tax.

It is represented that the Metals Industry Research and Development Center (MIRDC), an attached agency of the Department of Science and Technology (DOST), conducted a public bidding for the purchase of Integrated Manual/CNC Milling Machine and High Speed Vertical Machining; the contracts for said purchases were awarded to Makino Asia Pte. Ltd ("Makino Asia"), a non-resident foreign corporation based in Singapore; that Makino Asia sent a representative to the Philippines to attend to the requirements of the bidding process and to facilitate the transactions; that the VAT on importation has been paid and the equipment was delivered to MIRDC; and that the Singapore office of Makino Asia issued an invoice therefor.

In reply, please be informed that Sections 2.57.1(I) and 2.57.3 of Revenue Regulations (RR) No. 2-98, as amended, provide:

> "(I) Income Derived From all Sources Within the Philippines by Non-Resident Foreign Corporation. — The following shall be subject to **final withholding tax** based on the gross amount of income and at the rate of tax prescribed therefor:
>
> (1) In general — On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation

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which is subject to capital gains tax under Sec. 28(B)(5)(c) — at the following rates:

xxx xxx xxx

32% - beginning January 1, 2000 and thereafter"
[now 30% effective January 1, 2009] (Emphasis supplied)

"SECTION 2.57.3. Persons Required to Deduct and Withhold. — The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:

(A). . .
(B). . .
(C) All government offices including government-owned or controlled corporations, as well as provincial, city and municipal governments and barangays.

xxx xxx xxx"

In relation to the afore-quoted provisions of RR No. 2-98, as amended, Section 4.114-2 of RR No. 16-05, as amended by RR 4-07, provides, viz:

"SECTION 4.114-2. Withholding of VAT on Government Money Payments and Payments to Non-Residents. —

(a) The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at 12% VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof."

From the afore-quoted provisions of RR No. 2-98, as amended, and RR No. 16-05, as amended, it is clear that MIRDC is constituted as the withholding agent of the government with respect to the money payments it made to Makino Asia. Please take note that the sale of the subject equipment by Makino Asia to MIRDC is subject to the final withholding tax on income at the rate of 30% of the gross payment made, pursuant to Section 2.57.1(I) of RR No. 2-98, as amended.

In addition, the aforesaid sale is subject to the final withholding on VAT at the rate of 5% of the gross payment thereof. The 5% final VAT withholding rate shall represent the net VAT payable by Makino Asia. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods to MIRDC in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to MIRDC exceeds seven percent (7%) of gross payments, the excess may form part of the Makino Asia's expense or cost. On the other hand, if actual input VAT attributable to sale to MIRDC is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost. *(RR No.16-05, as amended by RR No. 4-2007)*

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In sum, MIRDC, being a government owned and controlled corporation, is mandated to withhold final income tax at 30% and final VAT at 5% on its gross payments made to Makino Asia for the purchase of the subject equipment.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed 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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