REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

Quezon City

| |
|---|
| 23(F); 42 (C) (3); 108(A) NIRC of 1997, as amended |
| RA 7916 |
| BIR Ruling No. 345-2011 |
| OT-007-2020 |

JAN 2 0 2020

**PUNONGBAYAN & ARAULLO**
20th Floor, Tower 1
The Enterprise Center
6766 Ayala Avenue
Makati City

Attention: **ATTY. ELEANOR L. ROQUE**
Tax Principal, Tax Advisory & Compliance

Gentlemen:

This refers to your letter dated January 13, 2010, requesting confirmation of your opinion that the service fees paid to SIIX Corporation ("SIIX Co.") by SIIX Logistic Phils., Inc. ("SIIX Logistics") pursuant to the Service Agreement which the two corporations have previously executed, are not subject to income tax, withholding tax, and value added tax (VAT) in the Philippines.

It is represented that SIIX Logistics, is a corporation duly organized and established under Philippine laws per Securities and Exchange Commission (SEC) Certificate of Registration No. [redacted], with business address located at 125 Technology Avenue, Phase 4, Special Processing Economic Zone, Laguna Techno Park, Inc., Biñan, Laguna. It is also duly registered with the Philippine Export Zone Authority ("PEZA") as an Ecozone Facilities Enterprise, with Certificate of Registration No. [redacted], dated February 28, 1997, as further amended on September 19, 2003. It is licensed to engage in the importation of electronic parts and components, sorting and kitting them for subsequent sale to an export manufacturer, distribution of electronic products to other export manufactures in PEZA-administered Ecozones and distribution to its overseas clients (direct export) of electronic products from PEZA-registered export enterprises. As such, it is subject to the preferential rate of 5% tax on the gross income earned from its registered activities, in lieu of all taxes.

On the other hand, SIIX Co. is a corporation duly established and existing by virtue of the laws of Japan, with business address at 1-4-9, Bingo-machi, Chuo-ku, Osaka City, Japan. SIIX Co. owns 100% of SIIX Logistics. It is not registered either as a corporation or as a partnership in the Philippines, as shown in the Certification of

Non-Registration of Company dated November 4, 2009 issued by the Securities and Exchange Commission ("SEC").

On 5 October 2009, SIIX Logistics and SIIX Co. entered into a Service Agreement, pursuant to which SIIX Logistics engaged the services of the latter to provide consulting services. Under Appendix 1 of the said Service Agreement, the services to be rendered by SIIX Co. are as follows:

a) Legal Consulting Service – review of and advice on various business contracts which SIIX Logistics enters into with its customers, contractors, etc.;

b) Consulting on purchase of parts/components – a.) supplying price information retrieved from SIIX Corporation's QPS quotation system, and b.) negotiating with local suppliers on behalf of SIIX Logistics for efficient purchase of parts/components;

c) Consulting on financial, accounting and tax matters – negotiating with banking facilities on behalf of SIIX Logistics for borrowing operation fund and other assistance in solving accounting/tax issues; and

d) Consulting on computer system – providing maintenance and support in utilizing the SIIX Integrated Business Operating System (SIBOS) and Warehousing Management System (WMS).

That pursuant to the Agreement, the abovementioned services are rendered by the employees and personnel of SIIX Co. exclusively at its headquarters in Osaka, Japan and shall not involve any transfer of technology, know-how or other intellectual property rights. That as consideration for these services, SIIX Logistics will pay SIIX Co. service fees, the particulars of which are provided in Appendix 1 of the Service Agreement.

Based on the forgoing representations, you now request for the confirmation of your opinion that:

a) the management fees received by SIIX Co. from SIIX Logistics pursuant to the Service Agreement entered into by the parties are not subject to Philippine income tax and consequently, to withholding tax pursuant to Section 23 (F) of the Tax Code of 1997, in relation to Section 28 (B) and Section 42 (A) (3) of the same Code; and

b) the said management fees are also not subject to 12% value-added tax (VAT) based on Section 108 (A) of the Tax Code of 1997 since all services are performed by SIIX Co. outside the Philippines.

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

OT-007-2020
JAN 2 0 2020

> *"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 ours)

Concerning income from the provision of services, under Section 42(A)(3) of the Tax Code, income is considered derived in the Philippines only if the services are actually performed in the Philippines, to wit:

> *"Section 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;"* (Emphasis ours)

Accordingly, service fees paid by SIIX Logistics for the services rendered by SIIX Co. in Japan pursuant to the Agreement shall not be subject to income tax, pursuant to Section 23(F), in relation to Section 42(A)(3), of the Tax Code, and thus, SIIX Logistics is not obliged to withhold any tax on the said service fees. *(BIR Ruling No. 345-2011* dated September 22, 2011)

It must be emphasized, however, that any performance of service under the Agreement should be considered off-shore services only if they relate to the services performed outside the Philippines. It is noted that the subject consulting services may also be rendered outside SIIX Co's headquarters office in Osaka, Japan. Thus, any service which may be required to be performed in the Philippines under the Agreement should be considered on-shore works, and, thus, payments therefor are subject to Philippine income tax at the rate of thirty percent (30%) of the gross amount thereof under Section 28(B)(1) of the 1997 Tax Code, as amended. For this purpose, SIIX Logistics must properly allocate and/or apportion those payments for services rendered within the Philippines and in Osaka, Japan, such that only the payments for services rendered in Osaka, Japan will be exempt from income tax.

Finally, with respect to value-added tax ("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 Tax Code, as amended, provides:

> *"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –*

OT-007-2020
JAN 2 0 2020

> (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..."*

Accordingly, all gross receipts derived by SIIX Co. for the performance of the services within the Philippines are subject to VAT. On the other hand, gross receipts derived by SIIX Co. for the performance of the offshore services are not subject to VAT. (*BIR Ruling No. 331-2012* dated May 14, 2012)

SIIX Logistics, being the resident withholding agent and a payor in control of payment, is responsible for the withholding of the twelve percent (12%) final VAT on the payments for the services rendered within the Philippines. SIIX Logistics shall then remit the VAT withheld to the BIR. It shall use the BIR Form No. 1600 (Monthly Remittance Return of Value-Added Tax & Other Percentage Taxes Withheld). The duly filed BIR Form No. 1600 and proof of payment thereof shall serve as documentary substantiation for the claim of input tax to be applied against the output tax that may be due from SIIX Logistics if it is a VAT-registered taxpayer. In addition, SIIX Logistics is required to issue in quadruplicate the relevant Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307), the first three copies for SIIX Co. and the fourth copy for SIIX Logistics as its file copy (Sections 4 & 6, Revenue Regulations (RR) No. 4-2002; Section 3 of RR 8-2002; Section 7 of RR 14-2002).

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 represented are different, then this ruling shall be considered null and void.

Very truly yours,

**CAESAR R. DULAY**
Commissioner of Internal Revenue

031797

K-1

[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.