REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sec. 15(g), R.A. No. 9513 RR No. 2-98, as amended
BIR Ruling No. 751-2018 BIR Ruling No. 1299-2018 BIR Ruling No. 404-2019
OT- 006 - 2023

JAN 23 2023

PHILIPPINE HYBRID ENERGY SYSTEMS, INC.
8F Unit 8A Inoza Tower
40th St., Bonifacio Global City
Taguig City 1634

Attention: **DAN DYONNE EMINIANO Q. GONZALES**
Corporate Secretary

Gentlemen:

This refers to your request on behalf of **PHILIPPINE HYBRID ENERGY SYSTEMS, INC. (the "Company")** for a confirmatory ruling that the Company, a Department of Energy (DOE)-registered Renewable Energy (RE) Developer, is entitled to value-added tax (VAT) zero-rating on its purchases of local supply of goods, properties and services pursuant to Section 15(g) of Republic Act (R.A.) No. 9513, otherwise known as the "Renewable Energy Act of 2008", and that the income payment received by the Company through the operation of its Wind Energy Project during the effectivity of its Income Tax Holiday (ITH) are exempt from the creditable withholding tax imposed under Revenue Regulations (RR) No. 2-98, as amended.

As represented, the Company is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission (SEC) with Company Registration No. A200017683. The primary purpose of the Company, as stated in its Articles of Incorporation, is as follows:

> "to design, construct, erect, assemble, commission and operate wind, diesel, turbine, and other power-generating plants and related facilities for the conversion into electricity of distillate and other fuels provided by and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, other entity engaged in the development, supply or distribution of energy; provided, that, in no event shall the Corporation itself engage in the distribution of electricity, in retail trade or in the business of a public utility, or provide a public service, or engage in industries or activities

gr

reserved by the Constitution or laws to corporation wholly owned by Filipino citizens."

Pursuant to its primary purpose, the Company, as an RE Developer, is engaged in wind exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Wind Energy Systems to convert Wind Energy to electrical power and the transmission of suck electrical power and/or other non-electrical uses.

The Company is a Registered RE Developer with the BIR, Department of Energy ("DOE") and Board of Investments ("BOI"). The details of its registration with the aforementioned government agencies are as follows:

TIN	**Site**	**DOE Certificate of Registration (COR) No.**	**BOI Certificate of Registration**	**Type of Registered Activity under BOI**
	Abra de Ilog, Occidental Mindoro; Puerto Galera, Oriental Mindoro	WESC (issued on 14 March 2011)	COR No. (issued on 22 November 2013)	Renewable Energy Developer of 8x2 MW Wind Energy Power Systems (WEPS) Project

In reply, please be informed as follows:

<u>VAT Zero-Rating</u>

Section 15(g) of RA No. 9513 provides that:

> *"Section 15. Incentives for Renewable Energy Projects and Activities. – RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:*
>
> *xxx xxx xxx*
>
> *(g) Zero Percent Value-Added Tax Rate. – xxx*
>
> *All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.*

OT 006 - 2023
JAN 23 2023

> *This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.*

Clearly, RA No. 9513 intended to exclude RE Developers from the coverage of the 12% VAT on their local purchases of goods and services needed for the development, construction and installation of their power plant facilities and the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors. Under said law, the local purchases of goods and services by RE Developers are subject to zero percent (0%) VAT provided that these are needed for the development, construction and installation of their power plant facilities as well as the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors. This is one of the fiscal incentives given by the government to encourage RE Developers to develop and utilize the renewable energy resources in the country.

Accordingly, since **PHILIPPINE HYBRID ENERGY SYSTEMS, INC.** is a DOE-certified RE Developer, its suppliers/sellers of goods and services should not pass on 12% VAT to the Company's purchases of goods and services that will be used in the development, construction and installation of its power plant facilities and the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and contractors, pursuant to Section 15 of RA No. 9513.

It must be emphasized that the zero-percent VAT shall be limited only to the Company's local purchases of goods and services that will be used in the development, construction and installation of the above-enumerated projects/activities. This includes the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

Likewise, the grant of VAT zero-rating shall be subject to post audit verification by the BIR whether the purchased goods/services were indeed utilized in the development, construction and installation of power plant facilities.

Income Tax/CWT

Section 2.57.5 (B) (2) of RR No. 2-98, as amended, implementing Section 57 (B) of the National Internal Revenue Code (Tax Code) of 1997, as amended, states that the withholding tax prescribed in the said Regulations shall not apply to income payments to persons enjoying exemption from the income tax provided by Republic Act No. 7916 and the Omnibus Investments Code of 1987.

Thus, **PHILIPPINE HYBRID ENERGY SYSTEMS, INC.** is exempt from income tax and CWT on revenues generated from the sales of electricity of the 8x2 MW WEPS Project, a project duly registered with the BOI under Certificate of Registration (COR) No. dated November 22, 2013, for a period of **seven (7) years** beginning from **April 2015** or actual

ᛃ

OT- 0 0 6 - 2 0 2 3
JAN 2 3 2023

start commercial operations[1], whichever is earlier, but in no case earlier than the date of registration of the project with the BOI, pursuant to Executive Order (EO) No. 226, otherwise known as the "Omnibus Investments Code of 1987" and Section 2.57.5 (B) (2) of RR No. 2-98, as amended. Also, only revenues derived from power generated and sold to the grid, other entities and/or communities shall be entitled to ITH.

Lastly, the Company's entitlement to ITH for its BOI-registered project is subject to the compliance with the provisions of the Specific Terms and Conditions of its BOI-COR.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

LARRY M. BARCELO
Assistant Commissioner
Legal Service
00010435

K-1

[1] Per BOI Legal Service letter dated September 24, 2014, date of actual commercial operation shall be reckoned from the state at which the RE Plant generated the first kilowatt-hour of energy after commissioning or testing, or two (2) months from the start of such commissioning or testing whichever comes earlier, as certified by the DOE.