



Date OCT 26 2021

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CUSTOMS MEMORANDUM CIRCULAR

NO. 220-2021

**SUBJECT: TAX EXEMPTION OF SAN MIGUEL AEROCITY INCORPORATED UNDER
REPUBLIC ACT NO. 11506**

This refers to Republic Act No. 11506 entitled "*An Act Granting San Miguel Aerocity Inc. a Franchise to Construct, Develop, Establish, Operate and Maintain a Domestic and International Airport in the Municipality of Bulakan, Province of Bulacan, and to Construct, Develop, Establish, Operate and Maintain an Adjacent Airport City*" (Annex "A"). Section 16 thereof provides:

Section 16. Tax Exemptions. - During the ten-year construction period, the grantee, its successors or assignees, shall be exempt from any and all direct and indirect taxes and fees of any kind, nature or description, which emanate exclusively from the construction, development, establishment, and operation of the airport and Airport City, including income taxes, value-added taxes, percentage taxes, excise taxes, documentary stamp taxes, customs duties and tariffs, taxes on real estate, buildings and personal property, business taxes, franchise taxes, supervision fees, and permit fees levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority.

Thus, pursuant to RA No. 11506, all concerned are informed that San Miguel Aerocity Inc. (SMAI) is exempt from the payment of any and all direct and indirect taxes, customs duties, tariffs, and fees of any kind, nature and description, which emanate exclusively from the construction, development, establishment, and operation of the airport and Airport City, subject to the submission of a Tax Exemption Indorsement from the Department of Finance, along with the commercial documents, and other necessary submissions concerning the importation.

Furthermore, pursuant to Bureau of Internal Revenue Ruling No. OT-324-2021, the coverage of the tax exemption granted to SMAI shall be within the ten-year construction period, which started on 15 January 2021 (effectivity date of SMAI's Franchise) and will end on 14 January 2031 (Annex "B").

For records purposes, confirm the dissemination of this CMC throughout your offices within fifteen (15) days from receipt thereof.

This Circular shall take effect immediately.


REY LEONARDO B. GUERRERO
Commissioner



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H. No. 7507

Republic of the Philippines
Congress of the Philippines
Metro Manila
Eighteenth Congress
Second Regular Session

Begun and held in Metro Manila, on Monday, twenty-seventh day of July, two thousand twenty.

[REPUBLIC ACT NO. 11506]

AN ACT GRANTING SAN MIGUEL AEROCITY INC. A FRANCHISE TO CONSTRUCT, DEVELOP, ESTABLISH, OPERATE, AND MAINTAIN A DOMESTIC AND INTERNATIONAL AIRPORT IN THE MUNICIPALITY OF BULAKAN, PROVINCE OF BULACAN, AND TO CONSTRUCT, DEVELOP, ESTABLISH, OPERATE, AND MAINTAIN AN ADJACENT AIRPORT CITY

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Nature and Scope of Franchise.* – Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to San Miguel Aerocity Inc.,

hereinafter referred to as the grantee, its successors or assignees, a franchise to construct, develop, establish, operate, and maintain for commercial purposes and in the public interest, a domestic and international airport, hereinafter referred to as the airport, in Barangays Taliptip and Bambang in the Municipality of Bulakan, Province of Bulacan.

The grantee, its successors or assignees, shall likewise have the right to construct, acquire, lease, operate or manage such properties as are convenient or essential to efficiently carry out the objectives of this Act, such as toll roads, railroads, mass transport systems, hotels, warehouses, hangars, aircraft service stations and other facilities, as well as to develop the areas adjacent to the airport into one integral and comprehensive development, hereinafter collectively referred to as the Airport City.

SEC. 2. *Manner of Operation of Airport Facilities.* - All airport properties and facilities owned, maintained, operated, or managed by the grantee, its successors or assignees, shall be operated and maintained at all times in the best, cautious, and diligent manner and in accordance with the standards, practices and procedures required by the Manual of Standards-Aerodromes. It shall also be the duty of the grantee, its successors or assignees, whenever required to do so by the Department of Transportation (DOTr) or its legal successor, or the Civil Aviation Authority of the Philippines (CAAP), or any other authorized government agency, to modify, improve, and change such properties and facilities or systems in such a manner and to such extent as the progress in science and technological improvements in the airport or air transport service industry may render reasonable and proper.

SEC. 3. *Authority of the Civil Aviation Authority of the Philippines.* - The grantee, its successors or assignees, shall secure from the CAAP such appropriate certification, permit or license for the construction, installation and operation of the airport. In issuing the certificate, the CAAP shall have the power to impose such conditions relative to the construction, operation, and maintenance of the airport in compliance with international standards. The CAAP shall have the authority to regulate the construction and operation of the airport. The CAAP, however, shall not unreasonably withhold or delay the grant of any such authority, permit or license.

SEC. 4. *Responsibility to the Public.* - The grantee, its successors or assignees, shall conform to the ethics of honest enterprise and not use the airport for subversive and treasonable acts.

The grantee, its successors or assignees, shall construct, develop, establish, operate and maintain the airport in a manner that aligns with the sustainable development goals. It shall comply with environmental and sustainability standards and shall work with the affected local governments, communities and other concerned groups to ensure safe and inclusive development.

The grantee, its successors or assignees, shall operate and maintain the Airport City in a satisfactory manner at all times, and as far as economical and practicable, modify, improve, or change such systems and equipment used therein to keep abreast with the advances in science and technology.

SEC. 5. *Rates for Services.* - The charges and rates for the use of the airport shall be subject to the approval of the CAAP.

SEC. 6. *Airport City and Related Businesses.* - In order to encourage, promote and accelerate the sound and balanced industrial, economic and social development of the areas adjacent to the airport and attract investments therein, the grantee, its successors or assignees, is hereby authorized and allowed to construct, acquire, own, lease, operate, develop or manage the Airport City, and conduct other businesses related to the airport. In addition to the rights granted unto it under Section 1 of this Act, the grantee, its successors or assignees, shall have the right to lease, sublease or assign interests in, and to collect and receive any and all income from toll roads, railroads, and mass transport systems connecting to the airport, advertising, car park, installation of cables, telephone lines, fiber optics or water mains, water lines, and other business or commercial ventures or activities over all areas and aspects of the airport and the Airport City.

SEC. 7. *Right of the Government.* - A special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or disturbance of peace and order: to temporarily take over and operate the airport; to temporarily suspend the operation of the

airport in the interest of public safety, security and public welfare; or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, its successors or assignees, for the use of the airport during the period when these shall be so operated.

SEC. 8. Term of Franchise. - This franchise shall be in effect for a period of fifty (50) years from the effectivity of this Act, inclusive of the ten (10)-year maximum period for the design, planning and construction of the airport and the Airport City (the "Ten-Year Construction Period"), unless sooner revoked or cancelled. This franchise shall be deemed *ipso facto* revoked in the event the grantee, its successors or assignees, fails to comply with any of the following conditions:

- (a) Commence construction within one (1) year from the effectivity of this Act;
- (b) Commence operations within one (1) year from the approval of the operating permit from the CAAP;
- (c) Commence operations within twelve (12) years from the effectivity of this Act; and
- (d) Operate continuously for two (2) years.

At the expiration of this franchise, the grantee, its successors or assignees, shall turnover the ownership of the airport to the DOT.

SEC. 9. Acceptance and Compliance. - Acceptance of this franchise shall be given in writing to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon giving such acceptance, the grantee, its successors or assignees, shall exercise the privileges granted under this Act. Nonacceptance shall render this franchise void.

SEC. 10. Bond. - The grantee, its successors or assignees, shall file a bond with the CAAP in the amount that it shall determine to guarantee the compliance with and fulfillment of

the conditions under which this franchise is granted. If, after three (3) years from the date of the approval of its permit by the CAAP, the grantee, its successors or assignees, shall have fulfilled the conditions, the bond shall be cancelled by the CAAP. Otherwise, the bond shall be forfeited in favor of the government and the franchise *ipso facto* revoked.

SEC. 11. Gross Receipts. - The grantee, its successors or assignees, shall keep a separate account of the gross receipts of the business transacted by it and shall furnish the Commission on Audit (COA) and the Bureau of the Treasury a copy of such account not later than the thirty-first (31st) day of January of each year for the preceding twelve (12) months.

SEC. 12. Books and Accounts. - The books and accounts of the grantee, its successors or assignees, shall always be open to the inspection of the COA and its duly authorized representatives. It shall be the duty of the grantee, its successors or assignees, to submit to the COA two (2) copies of the quarterly reports on the gross receipts, the net profits and the general condition of the business.

SEC. 13. Warranty in Favor of the National and Local Governments. - The grantee, its successors or assignees, shall hold the national, provincial, city, and municipal governments of the Philippines free from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the airport.

SEC. 14. Sale, Lease, Transfer, Grant of Usufruct, or Assignment of Franchise. - The grantee, its successors or assignees, shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor the controlling interest of the grantee, its successors or assignees, be transferred, simultaneously or contemporaneously, to any person, firm, company, corporation, or entity without the prior approval of the Congress of the Philippines. Congress shall be informed of any sale, lease, transfer, grant of usufruct, or assignment of franchise or the

rights and privileges acquired thereunder, or of the merger or transfer of the controlling interest of the grantee, its successors or assignees, within sixty (60) days after the completion of said transaction. Failure to report to Congress such change of ownership shall render the franchise *ipso facto* revoked. Any person or entity to which this franchise is sold, transferred or assigned shall be subject to the same conditions, terms, restrictions, and limitations of this Act. *Provided*, That the limitations set forth in this section shall not apply to: (a) any transfer or issuance of shares of stock in the implementation of the requirement for the dispersal of the grantee's, its successors' or assignees', ownership pursuant to Section 18 of this Act; (b) any transfer or sale of shares of stock to a foreign or local investor or investors; (c) any issuance of shares to any foreign or local investors pursuant to or in connection with any increase in the grantee's, its successors' or assignees', authorized capital stock which shall result in the dilution of the stockholdings of the grantee's, its successors' or assignees', then existing stockholders; (d) any combination thereof where such transfer, sale or issuance is effected in order to enable the grantee, its successors or assignees, to raise the necessary capital or financing for the provision of any of the services authorized by this Act and/or to carry out any of the purposes for which the grantee, its successors or assignees, has been incorporated or organized; and (e) any sale, transfer or assignment by the grantee, its successors or assignees, in favor of an affiliate whose controlling interest is owned by the same parent corporation of the rights and privileges set forth in this section and in Sections 1, 6, 8, 15, 16, and 17 relative to the construction, acquisition, ownership, leasing, operation, development, or management of the Airport City: *Provided, finally*, That any such transfer, sale or issuance is in accordance with any applicable constitutional limitations.

SEC. 15. *Right-of-Way*. -- The grantee, its successors or assignees, in accordance with existing laws and local ordinances, shall have the power to acquire either by purchase, negotiation, expropriation or condemnation proceedings, any private lands within or adjacent to the premises of the airport for the following purposes: (1) acquisition and consolidation of lands for the development of the airport and the Airport City; and (2) acquisition


of right-of-way to the airport and the Airport City. Any provision of existing laws, ordinances, executive orders, rules or regulations to the contrary notwithstanding, the lands within the political jurisdiction of Barangays Talipit and Bambang that will comprise the airport and the adjacent Airport City, and the right-of-way thereto, are hereby declared as agricultural, and are hereby converted and reclassified as mixed-use commercial and/or industrial, and may be used by the grantee, its successors or assignees, for industrial, commercial and other lawful purposes.

SEC. 16. *Tax Exemptions*. -- During the ten-year construction period, the grantee, its successors or assignees, shall be exempt from any and all direct and indirect taxes and fees of any kind, nature or description, which emanate exclusively from the construction, development, establishment, and operation of the airport and Airport city, including income taxes, value-added taxes, percentage taxes, excise taxes, documentary stamp taxes, customs duties and tariffs, taxes on real estate, buildings and personal property, business taxes, franchise taxes, supervision fees, and permit fees levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority.

After the ten-year construction period and during the remaining term of this franchise, the grantee, its successors or assignees, shall be exempt from income taxes and taxes on real estate, buildings and personal property, levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority. However, such exemption from income taxes and taxes on real estate, buildings and personal property shall expire as soon as it is determined by the Bureau of Internal Revenue (BIR) that the grantee, its successors or assignees, has fully recovered its investment cost on the airport and on the Airport City, whereupon the grantee, its successors or assignees, shall be subjected to all taxes under the National Internal Revenue Code of 1997, as amended, and the Customs Modernization and Tariff Act.

SEC. 17. *Revenue Sharing with the Government*. -- During the term of this franchise and after the BIR has determined that the grantee, its successors or assignees, has fully recovered

This Act which originated in the House of Representatives was passed by the House of Representatives on September 7, 2020, amended by the Senate of the Philippines on October 12, 2020, and which amendments were concurred in by the House of Representatives in a special session on October 16, 2020.


MYRA MARIE D. VILLARICA
Secretary of the Senate

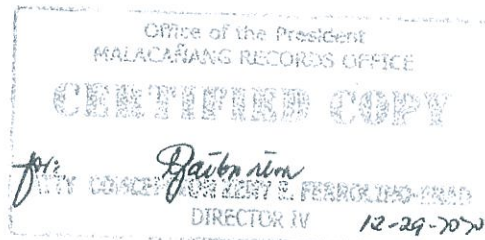

JOCELIA BIGHANI C. SIPIN
Secretary General
House of Representatives

Approved:

Lapsed into law on DEC 20 2020
without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution

RODRIGO ROA DUTERTE
President of the Philippines

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DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

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Quezon City

Republic Act No. 11506		OT- 324-2021
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Date: AUG 26 2021

SAN MIGUEL AEROCITY INC.

40 San Miguel Avenue
Mandaluyong City 1550

Attention: **Mariano Miguel L. Trinidad Jr.**
Comptroller

Gentlemen:

This refers to your request on behalf of **San Miguel Aerocity Inc.** ("SMAI"), requesting for the clarifications on the implementation of Sections 16 and 17 of Republic Act (RA) No. 11506, entitled "*THE ACT GRANTING SAN MIGUEL AEROCITY INC. A FRANCHISE TO CONSTRUCT, DEVELOP, ESTABLISH, OPERATE, AND MAINTAIN A DOMESTIC AND INTERNATIONAL AIRPORT IN THE MUNICIPALITY OF BULAKAN, PROVINCE OF BULACAN, AND TO CONSTRUCT, DEVELOP, ESTABLISH, OPERATE AND MAINTAIN AN ADJACENT AIRPORT CITY*", which became effective on January 15, 2021 – to wit:

"Section 16. Tax Exemptions. - During the ten-year construction period, the grantee, its successors or assignees, shall be exempt from any and all direct and indirect taxes and fees of any kind, nature or description, which emanate exclusively from the construction, development, establishment, and operation of the airport and Airport City, including income taxes, value-added taxes, percentage taxes, excise taxes, documentary stamp taxes, customs duties and tariffs, taxes on real estate, buildings and personal property, business taxes, franchise taxes, supervision fees, and permit fees levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority.

After the ten-year construction period and during the remaining term of this franchise, the grantee, its successors or assignees, shall be exempt from income taxes and taxes on real estate, buildings and personal property, levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority. However, such exemption from income taxes and taxes on real estate, buildings and personal property shall expire as soon as it is determined by the Bureau of Internal Revenue (BIR) that the grantee, its successors or assignees, has fully recovered its investment cost on the airport and on the Airport City, whereupon the grantee, its successors or assignees, shall be subjected to all taxes under the National Internal Revenue Code of 1997, as amended, and the Customs Modernization and Tariff Act."

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As represented, the phrase "construction, development, establishment, and operation" include all transactions that are necessary, related or incidental to the undertaking of the construction, development, establishment, operation and maintenance of the Airport and Airport City, such as, but not limited to:

1. Sales of goods and services, and other income generating activities
2. Purchases and importation of goods and services
3. Engagement of contractors and consultants
4. Purchase and/or sale of real and personal properties
5. Lease of real and personal properties
6. Financing transactions
7. Foreign exchange transactions
8. Hedging transactions
9. Management and other operations

In reply, please be informed that this Ruling clarifies the implementation of the provisions on the Tax Exemptions (Section 16) of RA No. 11506 involving the franchise of SMAI ("Aerocity Franchise", for short). For purposes of this Ruling, SMAI, the grantee, shall necessarily include its successors or assignees.

It is provided under Section 16 of the Aerocity Franchise that during the Ten-Year Construction Period, SMAI shall be exempt from any and all direct and indirect taxes and fees of any kind, nature or description, which emanate exclusively from the construction, development, establishment, and operation of the Airport and Airport City, including income tax, value-added tax, percentage tax, excise tax, documentary stamp tax, customs duties and tariffs, taxes on real estate, buildings and personal property, business taxes, franchise taxes, supervision fees, and permit fees levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority.

The internal revenue taxes shall be implemented in two phases such as (I) the Ten-Year Construction Period; and (II) after the Ten-Year Construction Period and during the remaining term of the Aerocity Franchise. The second phase, however, shall have two (2) sub-phases, such as (A) period of recovery; and (B) period after SMAI has fully recovered its Investment Cost on the Airport and on the Airport City.

I. DURING THE TEN-YEAR CONSTRUCTION PERIOD

During the Ten-Year Construction Period, which starts on 15 January 2021 (effective date of the Aerocity Franchise) and ends on 14 January 2031, SMAI shall be exempt from any and all direct and indirect taxes, duties, tariffs and fees of any kind, nature or description, which emanate exclusively from the construction, development, establishment, and operation of the Airport and Airport City, including income tax, value-added tax, percentage tax, excise tax and documentary stamp tax.

A. Income Tax

During the Ten-Year Construction Period, SMAI may generate income emanating exclusively from the construction, development, establishment, and

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operation of the Airport and Airport City. As provided under the Aerocity Franchise, such income is exempt from income tax.

Section 27 of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides for the rate of the income tax on Domestic Corporations, to wit:

“Section 27. Rates of Income Tax on Domestic Corporations.¹ –

(A) In General. – Except as otherwise provided in this Code, an income tax of twenty-five percent (25%) effective July 1, 2020, is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines. xxx”

However, the Aerocity Franchise expressly provides for income tax exemption of SMAI. Accordingly, during the Ten-Year Construction Period, the income of SMAI which emanates exclusively from the construction, development, establishment, and operation of the Airport and Airport City, is exempt from income tax. This income tax exemption SMAI shall inescapably include exemptions under Sections 27(D) and 27(E) of the Tax Code, as amended, to wit:

“(D) Rates of Tax on Certain Passive Incomes. –

xxx xxx xxx

(E) Minimum Corporate Income Tax on Domestic Corporations. –

xxx xxx xxx”

Moreover, please be informed that Section 2.57.5(B)(2) of the Revenue Regulations (RR) No. 2-98, as amended, provides as follows:

“SECTION 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”

¹ As amended by RA No. 11534, “An Act Reforming the Corporate Income Tax and Incentives System, amending for the purpose Sections 20,22,25,27,29,34,40,57,209,116,204 and 209 of the National Internal Revenue Code of 1997, as amended, and creating therein the new Title XIII and for other purposes.

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Based on the foregoing, Section 2.57.5 (B) of RR 2-98, as amended, is explicit in stating that the expanded withholding tax does not apply to income payments to persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special. Accordingly, since SMAI is exempt under the Aerocity Franchise, which is a special law, income payments to be made to it during the Ten-Year Construction Period is not subject to expanded withholding tax prescribed under RR. No. 2-98, as amended.

It must be emphasized, however, that the exemption from income tax granted to SMAI does not extend to its local or non-resident suppliers of goods, property or services. Accordingly, SMAI, as a constituted withholding agent for the government, is required to withhold the withholding tax on income payments to persons subject to tax pursuant to Section 57 of the Tax Code, as amended. Provided, however, that in the case of non-resident suppliers, the applicable final withholding tax may be reduced or eliminated under relevant tax treaty provisions, subject to compliance with applicable tax laws, rules and regulations.

B. Value-Added Tax ("VAT")

As regards the VAT exemption of SMAI, Section 109 (1) (K) of the Tax Code, as amended, provides:

"Section 9. Exempt Transactions – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529" (emphasis supplied)

Accordingly, since the Aerocity Franchise, which is a special law, expressly exempts SMAI from VAT, its sales of goods, property and services during the Ten-Year Construction Period, which emanate exclusively from the construction, development, establishment, and operation of the Airport and Airport City, shall not be subject to VAT.

Moreover, Section 106(A)(2)(b) of the Tax Code, as amended, provides for VAT at zero rate on sales to entities exempt under special laws, to wit:

"Section 106. Value-Added Tax on Sale of Goods or Properties. –

A) Rate and Base of Tax. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or

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properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(b) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate." (emphasis supplied)

Relatively, Section 108(B)(3) of the Tax Code, as amended, provides for VAT at zero rate on services rendered to entities exempt under special laws, to wit:

"Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -

xxx xxx xxx

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

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;" (emphasis supplied)

Accordingly, as SMAI is exempt from any and all direct and indirect taxes, duties, tariffs and fees of any kind, nature or description under the Aerocity Franchise, all importations and domestic purchases of goods, property and services during the Ten-Year Construction Period, emanating exclusively from the construction, development, establishment, and operation of the Airport and Airport City, shall not be subject to VAT. Effectively, no VAT shall be passed on to SMAI on its importations and domestic purchases of goods and services emanating from the said activities for the Ten-Year Construction Period. This Ruling shall serve as sufficient basis and certification of SMAI's VAT exemption and for SMAI's VAT-registered suppliers of goods, property or services to treat their sales to SMAI as VAT-zero rated. No separate confirmatory ruling or certification is necessary for the suppliers of SMAI.

C. Percentage Tax

Under Section 16 of the Aerocity Franchise, SMAI shall be exempt from any and all direct and indirect taxes, including Percentage Tax. Accordingly, the sales or receipts of SMAI which emanate exclusively from the construction, development, establishment, and operation of the Airport and Airport City, is

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not subject to Percentage Tax imposed under Title V of the Tax Code, as amended.

D. Excise Tax

Under Section 16 of the Aerocity Franchise, SMAI shall be exempt from any and all direct and indirect taxes, including Excise Tax. Accordingly, all excisable transactions including importation of goods of SMAI which emanate exclusively from the construction, development, establishment, and operation of the Airport and Airport City, is not subject to Excise Tax imposed under Title VI of the Tax Code, as amended.

E. Documentary Stamp Tax (DST)

Under Section 16 of the Aerocity Franchise, SMAI shall be exempt from any and all direct and indirect taxes, including DST. Accordingly, SMAI is not subject to DST imposed under Title VII of the Tax Code, as amended, upon documents, instruments, loan agreements and papers, which emanate exclusively from the construction, development, establishment, and operation of the Airport and Airport City.

However, Section 173 of the Tax Code, as amended, provides as follows:

*"Section 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: **Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.**" (emphasis supplied)*

Thus, considering that SMAI enjoys exemption from the DST, the other party to the taxable document who is not exempt shall be the one directly liable to the DST imposed under Title VII of the Tax Code, as amended.

F. Donor's Tax

Under Section 16 of the Aerocity Franchise, SMAI shall be exempt from any and all direct and indirect taxes, including Donor's Tax. Accordingly, the donations made by SMAI which emanate exclusively from the construction, development, establishment, and operation of the airport and Airport City, is

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not subject to Donor's Tax imposed under Title III, Chapter II of the Tax Code, as amended.

G. All other internal revenue taxes

As provided under Section 16 of the Aerocity Franchise, SMAI shall be exempt from any and all direct and indirect taxes levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority. Accordingly, SMAI is not subject to any other internal revenue taxes, which emanate exclusively from the construction, development, establishment, and operation of the Airport and Airport City.

At the start of, and during the, Ten-Year Construction Period, the BIR Certificate of Registration ("COR") of SMAI shall be updated such that it reflects the tax exemptions granted by the Aerocity Franchise.

II. AFTER THE TEN-YEAR CONSTRUCTION PERIOD

It is provided under the second paragraph of Section 16 of the Aerocity Franchise, that after the Ten-Year Construction Period and during the remaining term of this franchise, the grantee, its successors or assignees, shall be exempt from income taxes and taxes on real estate, buildings and personal property, levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority. However, such exemption from income taxes and taxes on real estate, buildings and personal property shall expire as soon as it is determined by the Bureau of Internal Revenue (BIR) that the grantee, its successors or assignees, has fully recovered its investment cost on the airport and on the Airport City, whereupon the grantee, its successors or assignees, shall be subjected to all taxes under the National Internal Revenue Code of 1997, as amended, and the Customs Modernization and Tariff Act.

A. After the Ten-Year Construction Period and During the Term of the Franchise **but Before** the Full Recovery of the Investment Cost on the Airport and on the Airport City

After the Ten-Year construction period and during the term of the franchise **but before** the full recovery of the investment cost on the Airport and on the Airport City, SMAI shall continue to enjoy the exemption from income tax, as stated under Sec. 16 of the Aerocity Franchise.

B. After the Ten-Year Period and During the Term of the Franchise, **and After** the Full Recovery of the Investment Cost on the Airport and on the Airport City

After the Ten-Year Construction Period, during the term of the franchise, **and after** the Full Recovery of the Investment Cost on the Airport and on the Airport City, all the tax exemptions of SMAI shall expire. Accordingly, SMAI shall be subject to all taxes imposed under the Tax Code, amended.

In the event of the sale/transfer/assignment of rights and privileges including the tax exemptions as approved by Congress and set forth in Sections 14 and 16 of the Aerocity Franchise, SMAI is required to officially notify the BIR in writing of the same within sixty

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(60) days from the execution thereof and attaching copies of the Deeds of Sale/Transfer/Assignment thereto, as the case may be. An updated Certificate of Registration and General Information Sheet shall also be submitted showing the relationship of the successor/transferee/assignee to SMAI and reflecting the rights, privileges and tax exemptions subject of the sale/transfer/assignment and granted under the Aerocity Franchise. The BIR may require the submission of additional documents relative to the updating of the Certificate of Registration.

For purposes of sale/transfer/assignment of rights and privileges relative to the construction, acquisition, ownership, leasing, operation, development or management of the Airport City in favor of an "affiliate" under Section 14 of the Aerocity Franchise, the term "affiliate" shall pertain to any entity whose "controlling interest is owned" by SMAI's parent corporation, San Miguel Corporation. The terms "affiliate" and "control" shall be governed by existing lawsⁱ as well as relevant BIRⁱⁱ and SEC issuancesⁱⁱⁱ.

This Ruling shall serve as a Certification or confirmation of the tax exemptions of SMAI, its successors and assignees, as provided under R.A. 11506 or the Aerocity Franchise which took effect on January 15, 2021.

This Ruling is being issued on the basis of the facts and documents as represented and submitted. However, if upon investigation, the BIR ascertains 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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ⁱ Sec. 3. Item (b) of RA No. 9856 provides: "Affiliate" means a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation, which thereby becomes its parent corporation.

Sec. 4. Item (b) RA No. 10142 provides: "Affiliate" shall refer to a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation.

ⁱⁱ Section 3, Item 4 of RR No. 19-2020 provides: "Control" refers to the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

ⁱⁱⁱ SEC Memorandum Circular 1-2020, Rule 3. Item c., provides: "Affiliate" means a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of, another corporation, which thereby becomes its parent corporation.

The 2015 Implementing Rules and Regulations of the Securities Regulation Code (RA 8799), Rule 3. Item 3.1.8., provides: "Control" is the power to determine the financial and operating policies of an entity in order to benefit from its activities. It is presumed to exist when the parent entity owns, directly or through subsidiaries and/or associates, more than fifty percent (50%) of the voting power of an entity.



RCMG
SEP 03 2021
By: ALMA Time: 9:45

MASTER COPY

40 San Miguel Avenue,
Mandaluyong City 1550
Metro Manila, Philippines

BUREAU OF CUSTOMS
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Bea B. Dela Cerna
BY: ACOO TIME: 10:48

August 31, 2021

Hon. REY LEONARDO B. GUERRERO
Commissioner
Bureau of Customs
Manila

Attention: Hon. Donato B. San Juan
Deputy Commissioner
Internal Administration Group



BOC-09-24276

Dear Commissioner Guerrero,

We write to you in relation to the Importations of San Miguel Aerocity Incorporated (SMAI) which has been granted a legislative franchise to construct, operate and maintain a domestic and international airport in the province of Bulacan by virtue of Republic Act No. 11506 (Annex A).

Based on Section 16 of RA 11506, SMAI has been mandated to have the following tax exemptions:


During the ten-year construction period, the grantee, its successors or assignees, shall be exempt from any and all direct and indirect taxes and fees of any kind, nature or description which emanate exclusively from the construction, development, establishment, and operation of the airport and Airport city, including income taxes, value-added taxes, percentage taxes, excise taxes, documentary stamp taxes, customs duties and tariffs, taxes on real estate, buildings and personal property, business taxes, franchise taxes, supervision fees, and permanent fees levied, established or collected, or may be levied, established or collected, by any city, municipal, provincial or national authority.

On August 26, 2021, the Bureau of Internal Revenue (BIR) issued Ruling No. OT-324-2021 confirming and implementing the tax exemptions granted under RA 11506 in favor of SMAI, its successors and assignees (Annex B).

In view of the foregoing, may we kindly request for the proper notice and circularization of RA 11506 and BIR Ruling No. OT-324-2021 to Customs District Ports for purposes of the orderly processing of SMAI importations and the implementation of the tax exemptions granted thereunder.

Respectfully submitted for your consideration.

Thank you.

Very truly yours,

Mariano Miguel L. Trinidad, Jr.
Comptroller
San Miguel Aerocity, Inc.

BUREAU OF CUSTOMS
LEGAL SERVICE, RCMG
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By: Time: 11:45