REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Sec. 29(A)&(B)(2)(a) NIRC; RR 2-2001
BIR Ruling No. 357-19
OT- 033-2024
JUN 07 2024

PJAC LAND CORPORATION
PJAC Compound, Malagamot, Panacan
Davao City

Attention: **Mr. Art O. Tan**
President

Gentlemen:

This refers to your request for confirmation that PJAC Land Corporation ("PJAC") is exempt from the coverage of Improperly Accumulated Earnings Tax (IAET), being a publicly-held corporation, pursuant to Section 29 (A) of the National Internal Revenue Code of 1997 (Tax Code), as amended, in relation to Section 4 of Revenue Regulations (RR) No. 2-2001.

Background

PJAC is a corporation duly organized and existing under Philippine laws primarily to acquire by purchase, lease, donation, or otherwise, and to own, use, improve, develop, subdivide, dispose of real estate of all kinds, buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances. Its registered address is at Malagamot, Panacan, Davao City.

PJAC's equity structure, as shown in its latest General Information Sheet (GIS), is as follows:

Name and Nationality of Stockholder	Type	Number of Shares	Amount	% of Ownership
1. Banco de Oro Unibank, Inc. - Trust and Investments Group as Trustee of PJAC Retirement Fund *Filipino*	Preferred			
2. Art O. Tan *Filipino*	Preferred			
3. Maria Carina S. Antonio *Filipino*	Preferred			
4. Josephine R. Giducos *Filipino*	Preferred			
5. Kowa Company, Ltd. *Japanese*	Common			
6. Satoshige Adachi *Japanese*	Common			

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7. Takashi Tokumori *Japanese*	Common			
Total				

As shown above, % of the outstanding capital stock of PJAC is owned by Banco de Oro Unibank, Inc. ("BDO", formerly Philippine Commercial International Bank) as trustee of the retirement plan of Philippine-Japan Activated Carbon Corporation's employees.

Philippine-Japan Activated Carbon Corporation ("PJAC Corp.") is a corporation duly organized and existing under the Philippine laws primarily to manufacture activated carbon by carbonization and activation of coconut shell, mangrove charcoal or saw dust lumber, both of which are abundant natural resources in the Philippines; to acquire, construct, erect, lease and operate factories, plants and all machineries and equipment required for such manufacturing and industrial operation; and to engage in manufacturing goods, commodities, wares, and whatever products deemed necessary and profitable.

Furthermore, based on the Actuarial Valuation Report of PJAC Corp.'s Retirement Plan as of December 31, 2019, the members of the plan consist of One Hundred Forty-Nine employees.

In reply, please be informed that Section 29 (A) and (B) of the Tax Code, as amended, and as implemented by RR No. 2-2001, provides that in addition to other taxes imposed by Title II of the Tax Code, as amended, there shall be imposed for each taxable year a tax equal to 10% of the improperly accumulated taxable income of corporations formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders.

Thus, IAET is being imposed in the nature of a penalty to the corporation for the improper accumulation of its earnings, and as a form of deterrent to the avoidance of tax upon shareholders who are supposed to pay dividends tax on the earnings distributed to them by the corporation.

However, the IAET shall not apply to, among others, publicly-held corporations.

Section 29 (B) of the National Internal Revenue Code of 1997, as amended, provides that:

"SEC. 29. Imposition of Improperly Accumulated Earnings Tax. —

xxx xxx xxx

(B) Tax on Corporations Subject to Improperly Accumulated Earnings Tax. —

(1) In General. — The improperly accumulated earnings tax imposed in the preceding section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(2) Exceptions. — The improperly accumulated earnings tax as provided for under this Section shall not apply to:

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(a) Publicly-held corporations;
(b) Banks and other non-bank financial intermediaries; and
(c) Insurance companies.

xxx xxx xxx"

Furthermore, second paragraph of Section 4 of RR No. 2-2001 entitled "Implementing the Provision on Improperly Accumulated Earnings Tax under Section 29 of the Tax Code of 1997" states that:

> "For purposes of these Regulations, closely-held corporations are those corporations at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals. Domestic corporations not falling under the aforesaid definition are, therefore, publicly-held corporations."

The same section further provides that "for purposes of determining whether the corporation is closely held corporation, insofar as such determination is based on stock ownership, stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries."

Based on the foregoing, for purposes of determining whether or not a domestic corporation is a closely-held corporation or a publicly-held corporation, the ownership is ultimately traced to the individual shareholders. Where at least 50% in value of the outstanding capital stock or of the total combined voting power of all classes of stock entitled to vote in a corporation is owned directly or indirectly by not more than 20 individuals, the corporation is considered a closely-held corporation.

Thus, PJAC is considered a closely-held corporation since the % of its shareholdings is owned by PJAC Retirement Fund which is considered as only one (1) stockholder. The member-beneficiaries of PJAC Retirement Fund are not considered as stockholders who own directly or indirectly the shares of PJAC, since their entitlement to the benefits contemplated in the Retirement Plan depends upon compliance with certain conditions stated in the Plan. Hence, PJAC, Inc. is not a publicly held corporation exempt from IAET as contemplated under Section 29 (B) of the Tax Code, as amended, in relation to RR No. 2-2001. (*BIR Ruling No. 357-19 dated June 20, 2019*)

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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