REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 29 (A) and (B) (2) (a) of the National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 02-2001
BIR Ruling No. 1398-2018
CT- 096-2021
APR 12 2021

NAVARRO AMPER & CO.
9th Floor Net Lima Plaza
5th Avenue corner 26th Street
Bonifacio Global City
Taguig 1634

Attention: **MR. ARIEL T. LLEVA**
Director
Tax and Corporate Services

ATTY. WALTER L. ABELA, JR.
Partner
Tax and Corporate Services

Gentlemen:

This refers to your letter dated September 05, 2017, requesting on behalf of your client, **Atlas Copco (Philippines), Inc.**, ("ACPI" for brevity), for confirmation that ACPI is a publicly-held corporation and therefore exempt from the imposition of Improperly Accumulated Earnings Tax (IAET) pursuant to Section 29 of the National Internal Revenue Code (NIRC) of 1997, as amended, and implemented by Revenue Regulations (RR) No. 02-2001.

It is represented that ACPI is a domestic corporation organized and existing under the laws of the Philippines, with principal place of business at North Main Avenue, Lot 12, Block 2, Laguna Technopark, Biñan, Laguna; and that it is primarily engaged in the business of selling compressed air and hydraulic equipment, mining and construction equipment.

It is likewise represented that ACPI is a wholly owned subsidiary of Atlas Copco AB, a foreign corporation organized and existing under the laws of Sweden, with principal place of business at Sickla Industriväg, 19 Nacka Stockholm, AB 105 23, Sweden; and that Atlas Copco AB primarily operates through the following segments: Compressor Technique, Industrial Technique, Mining and Rock Excavation Technique, and Construction Technique.

It is further represented that Atlas Copco AB wholly holds 100% interest in ACPI, together with the following individuals:

Shareholder	**Number of Shares**	**Subscribed Amount**	**Amount Paid**
Magnus Gyllo	1	Php100	Php100
Horst Wasel	1	Php100	Php100
Rolando V. Medalla, Jr.	1	Php100	Php100
Sanjeev Sharma	1	Php100	Php100
Atlas Copco AB	*121,996*	Php12,199,600	Php12,199,600
	122,000	Php12,200,000	Php12,200,000

CT-096-2021
APR 12 2021

total combined voting power of all classes of stock entitled to vote in a corporation is owned directly or indirectly by at least 21 or more individuals, the corporation is considered publicly-held corporation as the term is defined in RR No. 02-2001.

Furthermore, in *BIR Ruling No. 094-2013 dated March 18, 2013,* this Office also ruled that to determine whether a corporation is publicly-held or not, is to ultimately trace to the individual shareholders of the parent company. In this BIR Ruling, the corporation involved was owned by another corporation which is wholly owned by the parent corporation. In resolving whether the corporation is a publicly-held corporation or not, this office ultimately traced the shareholdings of the individual shareholders of the parent company.

Such being the case, the ownership of a domestic corporation (like ACPI), for purposes of determining whether it is a closely-held corporation or a publicly-held corporation, is ultimately traced to the individual shareholders of the parent-company. Since ACPI is 100% owned by Atlas Copco AB, it shall be considered as being owned by Atlas Copco AB's shareholders.

In applying the foregoing principle, this Office holds that ACPI is exempt from the imposition of IAET considering that the shares of ACPI are 100% owned by Atlas Copco AB, a corporation where at least fifty percent (50%) of the outstanding capital stock or at least 50% of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by more than twenty (20) individuals; hence, a publicly-held corporation as defined in RR No. 02-2001.

In view of the foregoing, this Office holds that ACPI is considered a publicly-held corporation, and therefore, exempt from the imposition of IAET under Section 29 (B) (2) (a) of the NIRC of 1997, as amended.

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 avoid.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

K-1-LMAT

042181

and that Atlas Copco AB has 76,058 shareholders in which its largest 21 shareholders already own 39% of the total voting rights as of December 31, 2016.

In reply thereto, please be informed that Section 29 (A) and (B) (2) (a) of the NIRC of 1997, as amended, on the imposition of IAET, states that:

> *"SEC. 29. Imposition of Improperly Accumulated Earnings Tax. -*
>
> *(A) In General. - In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.*
>
> *(B) Tax on Corporations Subject to Improperly Accumulated Earning Tax. -*
>
> *(1) In General. - The improperly accumulated earning 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:***
>
> ***(a) Publicly-held corporations;***
>
> *(b) Banks and other non-bank financial intermediaries; and*
>
> (c) *Insurance companies."* (Emphasis supplied)

This kind of tax is being imposed in the nature of a penalty to a corporation for the improper accumulation of its earnings, 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, among others, to publicly-held corporations.

Furthermore, Section 4 of RR No. 02-2001[1] dated February 12, 2001 provides that:

> *"For purposes of these Regulations, closely-held corporation 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."*

For purposes of determining whether the corporation is a closely-held corporation, it is provided that 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.

Thus, in *BIR Ruling No. 025-2002 dated June 25, 2002*, this Office ruled that such shares will be considered as being owned proportionately by the shareholders. The ownership of a domestic corporation for purposes of determining whether it is closely-held corporation or a publicly-held corporation is ultimately traced to the individual shareholders of the parent company. Accordingly, where at least 50% of the outstanding capital or at least 50% of the

[1] Implementing the Provision on Improperly Accumulated Earnings Tax under Section 29 of the Tax Code of 1997.