April 12, 2021

BIR RULING NO. OT-100-21

Secs. 28 (B) (1); 42 (C) (3); & 108, NIRC;
BIR Ruling No. 212-12

Ajanta Pharma Philippines, Inc.
710 AXA Life Center, 1286 Sen. Gil Puyat Ave.
San Antonio Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 27, 2018 requesting on behalf of **BIO SCIENTIFIC RESEARCH LABORATORIES (I) PVT. LTD.** (the "Company") for a confirmation of your opinion that the service fees to be received by the Company in connection with its delivery of services to **Ajanta Pharma Philippines, Inc. ("Ajanta")** are exempt from Philippine income tax, and consequently, from withholding tax.

Documents show that the Company is a corporation organized and existing under the laws of India with principal office at Plot No. 106/3, besides Aries Pharmaceuticals, Opp. Golden Chemicals, S.V. Road, Mira Road, Thane, Maharastra, India. It is not registered with the Securities and Exchange Commission (SEC) to engage in business in the Philippines.

On the other hand, Ajanta is a corporation organized and existing under the laws of the Philippines with office address at 710 AXA Life Center, 1286 Sen. Gil Puyat Ave., San Antonio Village, Makati City, Metro Manila. It is engaged in the business of distributing, on a wholesale bases, pharmaceutical products. As part of the process for securing marketing authorizations with the Philippine Food and Drug Administration ("PFDA") Ajanta is required under PFDA Circular 2015-012 to perform bioequivalence studies for its new pharmaceutical products and/or existing pharmaceutical products requiring renewal ("Bioequivalence Studies").

On April 21, 2018, the Company and Ajanta entered into a Bioequivalent Agreement ("Agreement") whereby the Company will provide Bioequivalence Studies for Ajanta. The

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Company will perform the Bioequivalence Studies in Maharastra, India and the Bioequivalence Report will be sent to Ajanta in the Philippines.

In reply, please be informed that Sections 23 (F) and 28 (B) (1) of the National Internal Revenue Code of 1997, as amended (Tax Code) by Republic Act No. 9337 provide:

> ***"SECTION 23. General Principles of Income Taxation in the Philippines.*** *— Except when otherwise provided in this Code:*
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> 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.*
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> ***SECTION 28. Rates of Income Tax on Foreign Corporations. —***
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> xxx xxx xxx
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> *(B) Tax on Nonresident Foreign Corporation. —*
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> *(1) In General. — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5 (c): Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%)."*

On the other hand, Section 42 (C) (3), *supra* states:

> ***"SECTION 42. Income from Sources within the Philippines. —***
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> xxx xxx xxx
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> *(C) Gross Income from Sources without the Philippines. — The following items of gross income shall be treated as income from sources without the Philippines:*
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> xxx xxx xxx
>
> *(3) Compensation for labor or personal services performed without the Philippines;"*

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Pursuant to the above provisions, non-resident foreign corporations are subject to income tax only on income derived from all sources within the Philippines. Conversely, these corporations are not subject to income tax on income derived from sources outside the Philippines.

Further, Section 42 (C) (3) of the same Tax Code provides that personal services performed without the Philippines are considered income from sources without the Philippines. Hence, non-resident foreign corporations deriving income for services performed abroad are not subject to Philippine income tax since such services are considered income from sources without the Philippines.

This Office explained the above provisions in BIR Ruling No. 212-12 dated March 23, 2012, citing *CIR vs. British Overseas Airways Corporation*, G.R. Nos. 65773-74, April 30, 1987 and *CIR vs. Japan Airlines, Inc.*, G.R. No. 60714, March 6, 1991:

> *"The situs of tax for services is the place where the service is rendered. Under the Philippine source of income rules for income tax purposes, service income will be considered Philippine source income only if the services are rendered in the Philippines. Conversely, if the services are rendered outside the Philippines, the service income will be considered as foreign source income. x x x*
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> *"The rule in this jurisdiction regarding tax situs is: the source of an income is the property, activity or service that produced the income; the test of taxability is the source, and the source of an income is that activity which produced the income (CIR v. British Overseas Airways Corporation, G.R. Nos. 65773-74, April 30, 1987). Stated differently, the situs of the income derived from labor or personal services is determined solely by the place where service is rendered (CIR v. Japan Airlines, Inc., G.R. No. 60714, March 6, 1991). Compensation from services performed abroad is, therefore, considered income from sources without the Philippines and thus not subject to Philippine income tax."*

Moreover, Section 2.57.1 (I) (1) of Revenue Regulations (RR) No. 2-98, as amended, provides that non-resident foreign corporations are subject to final withholding tax only on their income derived from all sources within the Philippines.

IN VIEW OF THE FOREGOING, this Office hereby CONFIRMS your opinion that the income payment made by **Ajanta Pharma Philippines, Inc.** to **Bio Scientific Research Laboratories (I) PVT. LTD.** for services rendered abroad or outside the Philippines is NOT subject to Philippine income tax and consequently to withholding tax.

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

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ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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