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

Sec. 29 (A) & (B)(2)(a), NIRC, as Amended; RR No. 2-01
BIR Ruling No. 094-2013; BIR Ruling No. 025-2002
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DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House, Rufino cor. Valero Sts.
Salcedo Village, 1227,
Makati City, Philippines

Attention: **ATTY. FULVIO D. DAWILAN**

Sir:

This refers to your letter dated October 3, 2019 requesting on behalf of your client, Sumitomo Metal Mining Philippine Holdings Corporation ("SMMPH"), for confirmation that SMMPH is a publicly-held corporation and therefore exempt from the Improperly Accumulated Earnings Tax (IAET) pursuant to Section 29 of the National Internal Revenue Code of 1997 (Tax Code), as amended, and implemented by Revenue Regulations (RR) No. 2-2001.

It is represented that SMMPH is a domestic corporation organized and existing under and by virtue of the laws of the Philippines, with office address at 25th Floor, NAC Tower, 32nd Street, Bonifacio Global City, Taguig City; that it is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) and with the Securities and Exchange Commission (SEC), bearing SEC Registration Number ; and that its primary purpose is to invest in, acquire by purchase, exchange, assignment or to hold, own, use for investment or otherwise, shares of capital stock, bonds, debentures, promissory notes or other securities or obligations created, negotiated or issued by any corporation, association, or other entities, whether foreign or domestic, as and to the extent permitted by law; to acquire by purchase, exchange, assignment and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, or otherwise deal in or operate, enjoy, dispose of, any and all properties of every kind, nature and description and wherever situated, except as may be prohibited by law, and while the owner, holder, or possessor thereof, to exercise all the rights, powers and privileges of ownership or any other interest therein, including the right to receive, collect and dispose of any and all rentals, dividends, interest and income, derived therefrom, and the right to vote on any propriety or other interest, on any shares of the capital stock and upon any bonds, debentures, or other securities having voting power, so owned or held; and that the corporation shall not engage in the business of an open-end or close-end investment company as defined in the Investment Company Act (Republic Act No. 2629), without first complying with the applicable provisions of said Act nor shall it act as broker or dealer in securities.

It is likewise represented that SMMPH is One Hundred percent (100%) owned by Sumitomo Metal Mining Co., Ltd. of Japan ("SMM"), a corporation organized and existing under and by virtue of the laws of Japan.

It is further represented that SMM is a publicly-held company listed in the Tokyo Stock Exchange; that its stocks are owned and held by more than twenty (20) corporate and individual

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stockholders; and that as of 31 March 2019, the twenty (20) major shareholders of SMM own only 42.833% of its capital stock.

In reply thereto, please be informed that Section 29 (A) and (B) (2) (a) of the Tax Code 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 the 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 to, among others, publicly-held corporations.

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

> *"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 fifty percent (50%) of the outstanding capital or at least

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fifty percent (50%) of the 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. 2-2001.

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, the ownership of the domestic corporation must be ultimately traced to the individual shareholders of the parent company. In the aforesaid 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 SMMPH) 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 SMMPH is one hundred (100%) owned by SMM, SMMPH shall be considered as being owned by SMM's shareholders. Since SMM is a corporation where at least fifty percent (50%) 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 more than twenty (20) individuals, SMMPH is considered publicly-held corporation as the term is defined in RR No. 2-2001.

In view of the foregoing, this Office holds that SMMPH is considered a publicly-held corporation, and therefore, is exempt from the imposition of IAET under Section 29 (B) (2) (a) of the Tax Code, 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

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