May 3, 2021

BIR RULING NO. OT-149-21

Sec. 29 (A) & (B) (2) (a) NIRC; RR 2-2001; BIR Ruling No. 1398-18; BIR Ruling No. 0435-19; BIR Ruling No. 094-13; BIR Ruling No. 025-02

Sycip Gorres Velayo & Co.
6760 Ayala Avenue
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 15, 2019 requesting on behalf of your client, **Maxima Machineries, Inc. (MMI)**, for a confirmatory ruling that MMI, which is directly and indirectly owned by a publicly-held corporation, is exempt from Improperly Accumulated Earnings Tax (IAET) pursuant to Section 29 of the 1997 National Internal Revenue Code of 1997 (Tax Code), as amended, and implemented by Revenue Regulations (RR) No. 2-2001.

Background

MMI is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with its registered office and its principal place of business at 908 Quezon Avenue corner Dr. Garcia, Paligsahan, Quezon City. Likewise, MMI's primary purpose, as per its Articles of Incorporation (AOI) approved by the Securities and Exchange Commission (SEC) on February 2007 and was amended on January 24, 2018, to wit: "to buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares, and merchandise such as spare parts of replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses, trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description including consumables and incidentals necessary in the proper operation of the goods, wares and merchandise, and to

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conduct and carry out high standard of services that are necessary and desirable in such business as manufacturers, wholesaler, importers, exporters, as indentor, commission merchant, except the manufacture of food, drugs and cosmetics including rendering after sales service repair, maintenance and enhancement."

It is further represented that MMI's shares of stocks is owned by the following corporate stockholders, to wit: Seventy Two Percent (72%) owned by Marubeni Corporation (Marubeni), a publicly-held corporation duly listed in the Tokyo Stock Exchange with office address at 4-2 Ohtemachi 1-chome, Chiyoda-ku, Tokyo, Japan; Twenty Four Percent (24%) owned by Maxwealth Capital Resources, Inc. (Maxwealth), a domestic corporation duly organized and existing under the laws of the Philippines, with office address at 908 Quezon Avenue corner Dr. Garcia, Paligsahan, Quezon City; and Four Percent (4%) by Marubeni Philippines Corporation (MPC), a domestic corporation duly organized and existing under the laws of the Philippines with office address at 8th & 9th Floors, L.V. Locsin Building, Ayala Avenue corner Makati Avenue, Makati City.

In reply, 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 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:

(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

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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.

Furthermore, Section 4 of Revenue Regulations 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 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."*

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 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, 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 MMI) 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 ultimate parent-company. Since MMI is 72% owned by Marubeni Corporation, a publicly-held

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corporation duly listed in the Tokyo Stock Exchange, MMI shall be considered as being owned by Marubeni Corporation shareholders.

In applying the foregoing principle, this Office holds that, MMI is exempt from the imposition of IAET even if it is not directly owned by Marubeni Corporation considering that for purposes of determining whether it is a closely-held corporation or a publicly-held corporation, exempt from IAET, is ultimately traced to the individual shareholders of the ultimate parent company. Considering that Marubeni Corporation owns 72% of the shares of MMI, 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, the corporation is considered publicly-held corporation as the term is defined in RR No. 2-2001. *(BIR Ruling No. 1398-2018 dated November 19, 2018)*

WHEREFORE, in view of the foregoing, this Office holds that MMI 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 void.

Very truly yours,

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

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