July 24, 2018

BIR RULING NO. 1106-18

Sec. 32 (B) (7) (a) of the National Internal Revenue Code of 1997, as amended; BIR Ruling No. 449-12

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

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 21, 2015, requesting confirmation of your opinion that income from investments in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines, derived by **Kumpulan Wang Persaraan (Diperbadankan) ("KWP" for brevity)**, a statutory body wholly owned by the Federal Government of Malaysia, is exempt from Philippine income tax, and consequently, to withholding tax, pursuant to Section 32 (B) (7) (a) of the National Internal Revenue Code of 1997, as amended. Any income to be derived by KWP from its future investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits in banks in the Philippines shall likewise be exempt from Philippine income tax.

Background

KWP is a statutory body wholly owned by the Federal Government of Malaysia with office address at Level 4, 5, 6, & 8, Menara Yayasan Tun Razak, 200 Jalan Bukit Bintang, 55100 Kuala Lumpur, Malaysia. It was established on March 1, 2007 under Section 3 of Act 662, otherwise known as the "Retirement Fund Act 2007" to manage funds towards achieving maximized returns through benchmarking, dynamic investment framework, and sound risk management. Pursuant to Section 13 (5) of Act 662, the Fund shall be applied amongst others towards the cost of payment of any pension, gratuity or other benefits granted under any written law for officers of the public service and employees of statutory and local authorities in such manner and at such times as shall be authorized by the Malaysian Minister of Finance. In the event of any sums outstanding, payment is guaranteed by the Malaysian Government.

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As required under Section 6 (4) of Act 662, KWP is governed by Minister-appointed members of the board who are responsible for its administration and management. The board is composed of:

1. A Chairman who shall be the Secretary General of the Ministry of Finance;

2. A representative from the Central Bank of Malaysia;

3. A representative from the Ministry of Finance;

4. The Chief Executive Officer who shall be an *ex-officio* member;

5. Three representatives of the Government of Malaysia;

6. Three other persons from the private sector with experience and expertise in business or finance; and

7. A person who, in the opinion of the Minister, shall fairly represent the contributories to the Fund other than representatives of the Government of Malaysia.

In addition, as required under Section 7 of Act 662, the appointment of Investment Panel shall also be appointed by the Minister. The Members of Investment Panel shall be responsible for the matters pertaining to the investment of the Fund. The members shall consist of the following:

1. Chairman who shall be the Chairman of the Board or such other person as may be appointed by the Minister;

2. A representative from the Ministry of Finance;

3. The Chief Executive Officer who shall be the secretary; and

4. Four persons from the public or private sector with experience and expertise in business, investment, banking or finance.

Pursuant to its function of acting as state pension fund of the Government of Malaysia, KWP has several investments in the Philippines. As of December 8, 2015, KWP invested in various Philippine domestic corporations, particularly the following:

Type of Security	Description	Quantity
Government Bonds	Philippines Government Bonds	57,000,000
Equity/Shares	Philippine Long Distance Telephone Company	484,875
	Ayala Land, Inc.	1,673,100

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	Cebu Air, Inc.	144,130
	Globe Telecom, Inc.	6,400
	BDO Unibank, Inc.	292,130
	Security Bank Corporation	46,480
	Universal Robina Corporation	46,360
	Vista Land & Lifescapes, Inc.	1,098,200

As confirmed by the Ministry of Finance Malaysia, KWP is a tax resident of Malaysia and is granted a full income tax exemption on all its income commencing from the year it was established. The Ministry of Finance Malaysia further confirms, among others, the following:

1. KWP is a pension fund established as a statutory body and wholly owned by the Federal Government of Malaysia;

2. KWP is fully regulated by Act 662 and is fully operated under the control of the Federal Government of Malaysia, in particular, under the purview of the Ministry of Finance Malaysia;

3. The Fund is purely based on contributions received from the federal government, statutory bodies, local authorities and agencies with pensionable employees. The employees of these contributors are pensionable employees of the Government of Malaysia;

4. KWP's activities are audited by the National Audit Department and its financial is tabled to Parliament; and

5. The Malaysian Government guarantees any debt or liability which accrues to KWP.

Based on the following representations, you now request confirmation of your opinion that income from investments in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines, derived by KWP, is exempt from Philippine income tax, and consequently, to withholding tax, pursuant to Section 32 (B) (7) (a) of the National Internal Revenue Code of 1997, as amended, and that any income to be derived by KWP from its future investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits in banks in the Philippines shall likewise be exempt from Philippine income tax.

In reply thereto, please be informed that Section 32 (B) (7) (a) of the National Internal Revenue Code of 1997, as amended, provides:

"(B) Exclusions from Gross Income — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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(7) Miscellaneous Items —

> *(a) Income Derived by Foreign Government. — Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."*

In the above-cited provision, it is clear that income derived from investment in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by foreign governments and financing institutions wholly-owned, controlled or enjoying refinancing from foreign governments shall be exempt from income tax and, consequently, to withholding tax.

Considering that KWP is beneficially owned by the Federal Government of Malaysia, KWP falls within the purview of the term "financing institution owned by a foreign government" as contemplated under Section 32 (B) (7) (a) (ii) of the National Internal Revenue Code of 1997, as amended. Hence, any income derived by KWP in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits in bank in the Philippines, is exempt from Philippine income tax and, consequently, to withholding tax.

In view of the foregoing, your opinion is hereby confirmed that the income from investments in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines, derived by KWP, is exempt from Philippine income tax, and consequently, to withholding tax, and that any income to be derived by KWP from its future investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits in banks in the Philippines shall likewise be exempt from Philippine income tax. ***(BIR Ruling No. 449-2012 dated July 10, 2012)***

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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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