November 16, 2018

BIR RULING NO. 1369-18

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 July 15, 2014, requesting on behalf of your client, **State Board of Administration of Florida ("SBA-Florida" for brevity)** acting on behalf of the **Florida Retirement System ("FRS" for brevity)**, a statewide pension plan and entity owned and forming part of the State of Florida, for confirmation of your opinion that any income derived by the FRS from its investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits in banks in the Philippines, is exempt from Philippine income tax and, consequently, from withholding tax, pursuant to Section 32 (B) (7) (a) of the National Internal Revenue Code of 1997, as amended. Also, any future income from investments by SBA-Florida made on behalf of the FRS, in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits in the Philippines shall likewise be exempt from Philippine income tax.

Background:

SBA-Florida, with current address of 1801 Hermitage Boulevard, Tallahassee, Florida 32308, United States of America, is an entity created and by Chapter 14486, Acts of 1929, as amended, and on January 1, 1943, SBA-Florida was made a body corporate by Section 16, Article IX of the Florida Constitution (now Article IV, Section 49 (e) of the 1968 Florida Constitution). As required by Article IV Section 4 (e), of the Florida Constitution, SBA-Florida is governed by a Board composed of the Governor, the Attorney General and the Chief Financial Officer which shall exercise such powers and perform such duties as may be required by law. The Florida Legislature has established a statutory program of benefits for the FRS's members, retirees and other beneficiaries. The purpose of SBA-Florida is to invest and protect funds of the FRS and to deliver the

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benefits defined in statute by the Florida Legislature.

In turn, the FRS, a public pension plan established under Chap. 121 of the Florida Statutes, and part of the Florida government, is in the nature of a trust, which provides the retirement benefits to such persons as may be become entitled thereto. The trust fund holds the contribution paid out by its members. As mandated by law, the moneys in the FRS are derived from a variety of state and local governmental services. State officers and employees of different governmental units are the members of the FRS. The FRS, as certified by the Internal Revenue Service (IRS) of the U.S.A., is a trust forming part of a pension plan, qualified under Section 401 (a) of the U.S. Internal Revenue Code, which is exempt from U.S. taxation.

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 FRS, 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 future income from investments by SBA-Florida made on behalf of the FRS, in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits 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*:
>
> xxx xxx xxx
>
> *(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 FRS is the public pension plan of the State of Florida, a public entity created by the Constitution of Florida, FRS falls within the purview of the term "foreign government" as contemplated under Section 32 (B) (7) (a) (i) of the National

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Internal Revenue Code of 1997, as amended. Hence, any income derived by FRS in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits in banks 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 FRS, is exempt from Philippine income tax, and consequently, to withholding tax, and that any future income from investments by SBA-Florida made on behalf of the FRS, in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on its deposits 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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