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

Section 29 (B) of the National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 2-2001
BIR Ruling No. 035-2002
OT-0138-2020
FEB 06 2020

SIGUION REYNA, MONTECILLO & ONGSIAKO
4th & 6th Floors, Citibank Center, 8741 Paseo de Roxas
Makati City 1226

Attention: ATTY. MA. CORAZON U. DEL CASTILLO

ATTY. RAEGAN L. CAPUNO

Gentlemen:

This refers to your letter dated November 17, 2017, requesting on behalf of your client, **Sumisetsu Philippines, Inc. ("SPI" for brevity)**, for confirmation of your opinion that SPI is exempt from the improperly accumulated earnings tax (IAET) under Section 29 of the National Internal Revenue Code of 1997, as amended, and Revenue Regulations (RR) No. 2-2001 in relation to Revenue Memorandum Circular (RMC) No. 35-2011, because SPI is a publicly-held corporation.

Background:

SPI is a corporation duly organized and existing under Philippine laws with Securities and Exchange Commission (SEC) Company Registration No. and Taxpayer Identification Number (TIN) . SPI's taxable year is fiscal year ending March 31.

SPI is primarily engaged in the business of carrying out contracts to i) prepare plans for, construct or install facilities and system for the telephone, telex or other telecommunication facilities and systems, electrical, air conditioning, sanitary, plumbing or environmental pollution control facilities and systems; ii) prepare plans for and construct, or supervise the construction of factories, plants or industrial sites; iii) carry out the business of engineering or architectural works or projects, both domestic and foreign; iv) assign its officers and employees to the construction and project sites of SPI; and v) sell, on a wholesale basis, electric wires, cables, cooling, air conditioning or freezing machines and equipment, and other appliances, such as but not limited to, water heaters, or similar equipment and devices.

SPI's parent company is Sumitomo Densetsu Co., Ltd. of Japan which owns 40% of SPI. Its ultimate parent is Sumitomo Electric Industries, Ltd., a company incorporated in Japan.

Sumitomo Densetsu Co., Ltd. is a publicly-held corporation listed in Tokyo Stock Exchange since November 01, 1972. As of March 31, 2017, the number of listed shares of Sumitomo Densetsu Co., Ltd. is shares and the number of shareholders is

SPI has an authorized capital stock of divided into common shares with par value of per share and redeemable preferred shares with a par value of per share. Redeemable preferred shares are non-voting shares.

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Based on the latest General Information Sheet (GIS) filed with the SEC on June 16, 2017, the capital stock of SPI is fully subscribed and issued. The equity ownership structure is as follows:

Stockholder	Nationality	Shares Subscribed				Amount Paid (Php)
		Type	Number	Amount (Php)	Percentage	
1. Sumitomo Densetsu Co., Ltd.	Japanese	Common				4,276,000.00
		Preferred				
		Total				
2. SPI Employee Retirement Plan	Filipino	Common				1,731,000.00
3. Ma. Teresa Roxas Tan	Filipino	Common				
		Preferred				
		Total				
4. Yuji Mukai	Japanese	Common				
5. Tsuyomi Suzuki	Japanese	Common				
6. Koji Tanioku	Japanese	Common				
7. Tadeo F. Hilado	Filipino	Common				
		Preferred				
		Total				
8. Ana Teresa A. Oracion	Filipino	Common				
		Preferred				
		Total				
9. Salvador L. Pena	Filipino	Common				
		Preferred				
		Total				
TOTAL						

of paid-up capital or of the voting stock of SPI are owned by Sumitomo Densetsu Co., Ltd., the parent company of SPI which is a publicly-held corporation listed in Tokyo Stock Exchange. On the basis of the Certificate issued by Tokyo Stock Exchange and Sumitomo Mitsui Trust Bank, Limited, Sumitomo Densetsu Co., Ltd., has listed shares and owned by shareholders as of March 31, 2017.

In view of the foregoing, you now request for confirmation of your opinion that SPI is exempt from the IAET under Section 29 of the National Internal Revenue Code of 1997, as amended, and RR No. 2-2001 in relation to RMC No. 35-2011, because SPI is a publicly-held corporation.

In reply thereto, please be informed that Section 29 (A) and (B) of the National Internal Revenue Code of 1997, as amended, as implemented by RR No. 2-2001, provides that in addition to other taxes imposed by Title II of the National Internal Revenue Code of 1997, as amended, there shall be imposed for each taxable year a tax equal to 10% of the improperly accumulated taxable income of corporations formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders.

Thus, this kind of tax is being imposed in the nature of a penalty to the corporation for the 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 improperly accumulated earnings tax shall not apply to, among others, publicly-held corporations.

Under Sections 4 of RR No. 2-2001, 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.

In BIR Ruling No. 025-2002 dated June 25, 2002, this Office ruled that:

"Such being the case, since Abbott-Phils. is a wholly-owned subsidiary of Abbott-US, such shares will be considered as being owned proportionately by the Abbott-US shareholders. The ownership of a domestic corporation 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. Thus, where at least 50% of the outstanding capital stock 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 under the Regulations."

Further, Section 29 of the Tax Code of 1997 provides, viz:

Sec. 29. Imposition of Improperly Accumulated Earnings Tax. —

(A) . . .

(B) 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 corporation;
(b) Banks and other non-bank financial intermediaries; and
(c) Insurance companies.

xxx xxx xxx

Accordingly, this Office confirms your opinion that Abbott-Phils. is considered a publicly-held corporation exempt from the Improperly Accumulated Earnings Tax (IAET), based on the representation that as of the year-end 2000, Abbott-US had [redacted] shareholders holding a combined [redacted] shares of common stock and the twenty largest shareholders of Abbott-US as of September 30, 2001 own an aggregate of [redacted] percent of Abbott-US' issued and outstanding shares."

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Such being the case, SPI is a publicly-held corporation since [redacted] of its outstanding capital stock is ultimately owned directly or indirectly by more than twenty (20) stockholders, on account of the following paid-up capital:

Stockholder	Percentage
(a) Sumitomo Densetsu Co., Ltd., the parent company of SPI which is a publicly-held corporation listed in Tokyo Stock Exchange. As mentioned above, the shares of stock of Sumitomo Densetsu Co., Ltd. are owned by 4,954 shareholders	[redacted]
(b) SPI Employee Retirement Plan	[redacted]
(c) Ma. Teresa Roxas Tan	[redacted]
(d) Yuji Mukai	[redacted]
(e) Tsuyomi Suzuki	[redacted]
(f) Koji Tanioku	[redacted]
(g) Tadeo F. Hilado	[redacted]
(h) Ana Teresa A. Oracion	[redacted]
(i) Salvador L. Pena	[redacted]
Total	[redacted]

Hence, SPI cannot be considered a closely-held corporation but rather a publicly-held corporation and therefore, it is exempt from the imposition of IAET under Section 29 (B) of the National Internal Revenue Code of 1997, as amended, as implemented by RR No. 2-2001.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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