November 19, 2018

BIR RULING NO. 1398-18

Sec. 29 (A) & (B) (2) (a), NIRC, as Amended; RR No. 2-01; BIR Ruling No. 094-2013; BIR Ruling No. 025-2002

Quisumbing Torres
12th Floor, Net One Center
26th Street corner 3rd Avenue
Crescent Park West
Bonifacio Global City

Attention: *AAA*
and
BBB

Gentleman :

This refers to your letter dated March 31, 2015 requesting on behalf of your client, Unisys Public Sector Services Corporation ("UPSSC"), for confirmation that UPSSC 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 UPSSC is a domestic corporation organized and existing under and by virtue of the laws of the Philippines, with office address at Level 9, One Cyberpod, Eton Centris Station, EDSA corner Quezon Avenue, Quezon City; that it is registered with the Bureau of Internal Revenue (BIR) with TIN 000-000-000-000 and Securities and Exchange Commission (SEC) Registration Number AS094006362; and that its primary purpose is to create, manufacture, process, assemble, fabricate, develop, supply, license, lease (without engaging in financial leasing), sell at wholesale for cash or on credit, barter, exchange, trade, make advances upon, import or otherwise acquire, distribute, integrate, market, upgrade or modify computer hardware, computer system software programs, applications, components, devices and supplies, as well as to provide support, training, and consultancy services in the use and application of these products.

It is likewise represented that UPSSC is One Hundred percent (100%) owned by Unisys Holdings Corporation ("UHC"), a corporation organized and existing under and by virtue of the laws of the United States of America, with business address at 501

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Silverside Road, Suite 18-A, Wilmington, Delaware 19809, USA.

It is further represented that UHC is One Hundred percent (100%) owned by Unisys Corporation, a publicly-held company with headquarters at Blue Bell, Pennsylvania USA; that Unisys Corporation is traded under the ticker symbol "UIS" at the New York Stock Exchange; and that at least fifty percent (50%) of the outstanding capital stock of Unisys Corporation or at least fifty percent (50%) of the total combined voting power of all classes of Unisys Corporation's stock entitled to vote at a meeting of stockholders is owned directly or indirectly by at least twenty-one (21) or more individuals.

As of December 31, 2013, there were approximately 44.0 million shares outstanding and approximately 11,800 stockholders of record. As of March 03, 2014, following the mandatory conversion of 2.6 million shares of preferred stock into common stock, there were approximately 51.1 million shares outstanding and approximately 11,700 stockholders of record.

In reply thereto, please be informed that Section 29 (A) and (B) (2) (a) of the Tax Code of 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 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 improper accumulation of its earnings, as a form of deterrent to the avoidance of tax

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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 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 UPSSC) 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 UPSSC is 100% owned by UHC, which in turn is wholly-owned by Unisys Corporation, UPSSC shall be considered as being owned by Unisys Corporation's shareholders.

In applying the foregoing principle, this Office holds that, UPSSC is exempt from

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the imposition of IAET even if it is not directly owned by Unisys 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 UHC owns 100% of the shares of UPSSC, and that since the ownership of UHC is ultimately traced to Unisys Corporation, 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.

In view of the foregoing, this Office holds that UPSSC 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,

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

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