REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 32(B)(7)(a)
BIR Ruling Nos. 1106-18; 070-18; 373-16
OT- 3299-2020
MAR 10 2020

SALVADOR LLANILLO BERNARDO ·
ATTORNEYS-AT-LAW
815-816 Tower One and Exchange Plaza
Ayala Triangle, Ayala Avenue
Makati City

Attention: **Attys. Martin Ignacio D. Mijares**
Ray-an Francis V. Baybay
Nathan Michael O. Pico

Gentlemen:

This refers to your letter dated May 5, 2015 requesting on behalf of your client, **NORDDEUTSCHE LANDESBANK-GIROZENTRALE (NORD/LB)** for confirmation of your opinion that the interest income derived by NORD/LB from loans extended to EDC Burgos Wind Power Corporation (EBWPC) is exempt from income tax under Section 32(B)(7)(a) of the National Internal Revenue Code of 1997 (NIRC), as amended, and creditable withholding tax under Section 2.57.5(B) of Revenue Regulations (RR) No. 2-98, as amended.

Background

NORD/LB is a bank organized pursuant to a State Treaty dated August 22, 2007 executed among the states of Lower Saxony, Saxony-Anhalt, and Mecklenburg-Western Pomerania of the Federal Republic of Germany (the "State Treaty"). The 2007 State Treaty was amended in a subsequent state treaty dated July 12, 2011 executed among the same parties (the "State Treaty Amendment").

On the other hand, EBWPC is a corporation organized and existing under the laws of the Republic of the Philippines. It is engaged in the business of generating energy derived from wind power.

Pursuant to the Export Credit Agency (ECA) Debt Facility Agreement and US Dollar Denominated (USD) Commercial Debt Facility (hereinafter collectively referred to as the "Loan Agreement"), NORD/LB, together with other banks (the "Debt Participants"), agreed to contribute to a pool of funds constituted for the purpose of extending loan to EBWPC. For and in consideration of the loan, EBWPC undertook to pay interest to the Debt Participants, including NORD/LB.

As shown in the State Treaty and State Treaty Amendment, NORD/LB is a corporation organized and owned by states of Lower Saxony, Saxony-Anhalt, and

Mecklenburg-Western Pomerania of the Federal Republic of Germany. The State Treaty and State Treaty Amendment remain effective and in force. Under Section 4, State Treaty, NORD/LB is authorized to conduct all types of banking and other business in furtherance of its objects, such as the issuance of mortgage-backed securities, public-debt bonds, and other bonds. Furthermore, NORD/LB shall act as a central and clearing bank for savings in these states. Clearly, NORD/LB is a financing institution owned by a foreign government.

In reply, please be informed that Section 32(B)(7)(a) of the NIRC provides that 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) financial institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments shall not be included in gross income and shall be exempt from taxation.

In BIR Ruling No. 373-16 dated November 8, 2016, this Office had the occasion to rule that:

> "..... any income received by BNM from its investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks, and capital gains on sale of shares of stock, bonds, and other domestic securities in the Philippines are exempt from Philippine income tax and consequently from withholding tax subject to the condition that BANK NEGARA MALAYSIA remains as a financial institution owned, controlled and financed by the Government of Malaysia. *(BIR Ruling Nos. 109-12 dated February 22, 2012, 449-12 dated July 10, 2012 and 495-12 dated July 31, 2012)"*

Accordingly, any interest income received by NORD/LB from the loans it extended to EBWPC is exempt from Philippine income tax and consequently from withholding tax subject to the condition that NORD/LB remains as a financing institution owned and controlled by the Federal Republic of Germany. *(BIR Ruling Nos. 373-16 dated November 8, 2016, 1106-18 dated July 24, 2018 and 070-18 dated January 25, 2018)*

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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gps(NORD/LB)