April 5, 2019

BIR RULING NO. 242-19

Sec. 32 (B) (7) (a) (ii), TC; 000-00

Puno and Puno Law Offices
12th Floor East Tower Philippine Stock Exchange Center
Exchange Road
Ortigas Center, Pasig City 1605

Attention: *AAA*
BBB
CCC

Gentlemen :

This refers to your letter dated January 26, 2018 requesting on behalf of your client, **SN Power Invest Netherlands B.V. ("SNPIN")** for confirmation that as a financial institution owned, controlled and financed by the Kingdom of Norway, it is exempt from Philippine income tax and withholding tax on its income received 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 based on Section 32 (B) (7) (a) (ii) of the National Internal Revenue Code of 1997 ("Tax Code").

As represented, **SNPIN** is a non-resident foreign corporation, duly organized and existing under and by virtue of the laws of the Kingdom of Netherlands with principal office address at Gustav Mahlerplein 100, 1082 MA, Amsterdam, the Netherlands. [1] It has no business presence in the Philippines as evidenced by the certification from the Securities and Exchange Commission (SEC) that it is not registered to engage in business in the Philippines. SNPIN is 100% owned by SN Power AS ("SNP Norway"), a foreign corporation duly organized and existing under and by virtue of the laws of the Kingdom of Norway. [2] In turn, SNP Norway is 100% owned by Norwegian Investment Fund for Developing countries ("Norfund"), [3] which is 100% owned by the Royal Norwegian Ministry of Foreign Affairs of the Kingdom of Norway. [4]

In reply, please be informed that Section 32 (B) (7) (a) of the Tax Code of 1997, as amended, which you invoke as basis of exemption from payment of Philippine income tax and withholding tax on income received by SNPIN from its investments in the Philippines provides:

"(B) Exclusions from Gross Income. — The following items shall not be

Copyright 2020 CD Technologies Asia, Inc.

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."

Based on the representations made, it would appear that SNPIN is not directly owned, controlled, or directly enjoying refinancing from the Kingdom of Norway. It does not even show that SNPIN is a financial institution in contemplation of law. Besides, if the lawmakers intended to include under the term "foreign government" in Section 32 (B) (7) (a) (i) of the Tax Code of 1997, as amended, instrumentalities and government owned and/or controlled corporations (GOCCs), then, they could have expressly stated it in the aforesaid section. Absent such, it cannot be implied that instrumentalities and GOCCs are included in the term "foreign government." A tax exemption cannot arise from vague inference.

Tax exemptions are generally subject to a rigid interpretation against the assertion of a taxpayer and in favor of the taxing power (3 Sutherland, Stat. Const., 34d. ed., p. 296). The rule of statutory construction is "Tax exemptions are held strictly against the taxpayer, and if not expressly mentioned in the law must be within its purview by clear legislative intent." (*Commissioner of Customs vs. Philippine Acetylene Co., Inc.*, 39 SCRA 70). Exemption from taxation is never presumed nor implied. The grant of tax exemption must be express, clear and unambiguous. In other words, a claim of exemption from tax payment must be clearly shown. It should be based on the language in the law too plain to be mistaken. (*Govt. of the Philippine Islands vs. Monte de Piedad*, 52 Phil. 352; *New York v. Tax Commissioners*, 199 U.S.I., 25 Sup. Ct. 705, 50 L ed. 65, 4 Ann. Cas. 381).

IN VIEW OF THE FOREGOING, this Office hereby rules that SNPIN is not considered within the term "foreign government" as contemplated in Section 32 (B) (7) (a) (i) of the 1997 Tax Code, as amended. Hence, any income derived by SNPIN from its investments in the Philippines in loans, stocks, bonds or other domestic securities, or interest on its deposits in banks in the Philippines shall be subject to Philippine income tax and consequently to the withholding tax.

Please be guided accordingly.

Very truly yours,

Copyright 2020 CD Technologies Asia, Inc.

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

Footnotes

1. Extract of SNPIN registration with The Netherlands Chamber of Commerce is attached as Annex "B".
2. Certification executed by the Managing Director of SNPIN is attached as Annex "I" and Certificate of Registration for SNP Norway, issued by the Brønnøysund Register Centre of Norway is attached as Annex "C".
3. The Shareholders Register for SNP Norway as of 27 September 2017 is attached as Annex "G" and Certification executed by the Chief Executive Officer of SNP Norway is attached as Annex "H".
4. Certificate of Registration for Norfund, issued by the Brønnøysund Register Centre of Norway, is attached as Annex "D".

Copyright 2020 CD Technologies Asia, Inc.