October 6, 2016

BIR RULING NO. 349-16

Secs. 127 (A) (B) (D); 199 (e); RR 6-2008; BIR Ruling No. 238-12; BIR Ruling No. 148-10; BIR Ruling No. 035-99; BIR Ruling No. DA-001-06

Romulo Mabanta Buenaventura
Sayoc & De Los Angeles
21/F Philamlife Tower
8767 Paseo de Roxas, Makati City

Attention: *AAA &*
BBB

Gentlemen :

This refers to your letter dated July 11, 2016 requesting for confirmation that (a) the sale of primary or secondary shares by Pilipinas Shell Petroleum Corporation, Inc. (PSPC) and/or any of its existing shareholders in connection with PSPC's initial public offering is exempt from the IPO tax imposed under Sec. 127 (B) of the Tax Code of 1997, as amended; and (b) the sale of secondary shares by PSPC's existing shareholders as part of or in connection with PSPC's initial public offering will be subject to the stock transaction tax imposed under Sec. 127 (A) of the Tax Code but is exempt from capital gains tax, corporate income tax and documentary stamp tax pursuant to Sections 127 (D) and 199 (e) of the Tax Code, as amended.

It is represented that PSPC was incorporated in 1959 and is primarily engaged in the business of constructing, operating and maintaining petroleum refineries in the Philippines; that PSPC currently has more than 200 shareholders holding at least 100 shares each; that at least 68.18% of the outstanding shares of stock in PSPC are owned by Shell Overseas Investment BV (SOI), which is a wholly-owned subsidiary of Shell Petroleum NV (SPNV) which, in turn, is a wholly-owned subsidiary of Royal Dutch Shell Plc (RDS); that under Republic Act (RA) No. 8479, PSPC is required to make a public offering of at least 10% of its common stocks through the PSE; that at the time of filing of PSPC's application for listing with the PSE, at least 68.19% of the outstanding shares of stock in PSPC are owned

Copyright 2020 CD Technologies Asia, Inc.

by SOI, a wholly-owned subsidiary of SPNV which in turn is owned by RDS, whose shares are listed on stock exchanges in Amsterdam, London and New York and owned by more than 600,000 corporate and individual shareholders.

In support of your request, you submitted the following documents:

1) Photocopy of the Articles of Incorporation of PSPC;

2) Notarized list of shareholders of PSPC;

3) Authenticated Commercial Register Extracts of SOI;

4) Authenticated Commercial Register Extract of SPNV;

5) Notarized and Authenticated list of the Top 20 shareholders of RDS;

6) Certified and Authenticated copy of the Articles of Association of SOI;

7) Certified and Authenticated copy of the Articles of Association of SPNV;

8) Certified and Authenticated copy of the Articles of Association of RDS; and

9) Certified and Authenticated copy of the Certificate of Registration of RDS.

In reply thereto, please be informed that —

1. Section 127 (B) of the Tax Code of 1997, as amended, provides that —

"SEC. 127. *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.* —

"(B) *Tax on shares of stock sold or exchanged through initial public offering.* — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering of *shares of stock in closely held corporation*, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%)	

Copyright 2020 CD Technologies Asia, Inc.

but not over thirty three and one third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

For purposes of this Section, the term "closely held corporation" means any corporation at least fifty percent (50%) in value of the outstanding capital stock of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals.

For purposes of determining whether the corporation is a closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

(1) *Stock Not Owned by Individuals.* — 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.

xxx xxx xxx"

Thus, under Section 2 (q) of Revenue Regulations (RR) No. 6-2008, a closely-held corporation pertains to a corporation 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. For purposes of determining whether the corporation is a closely-held corporation, it is provided therein 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.

Since PSPC is owned by several individual and corporate shareholders at the time of the application to list the shares of PSPC with the PSE, the PSPC shares held by corporate shareholders will be considered as being proportionately owned by the shareholders of said corporations. Since SOI holds at least 68.18% of the outstanding shares of stock in PSPC and 100% of the outstanding shares of stock of SOI is owned by SPNV, and 100% of the outstanding shares of stock of SPNV is in turn owned by RDS, then 68.19% of the outstanding shares of stock of PSPC are considered owned proportionately by RDS' shareholders through SPNV and SOI. The shareholders of RDS, a corporation whose shares of stock are publicly-listed on the Amsterdam, London and New York Stock Exchanges, consist of more than 600,000 corporate and individual shareholders.

Copyright 2020 CD Technologies Asia, Inc.

In the case of a multi-tiered corporation, the stock attribution rule must be allowed to run continuously along the chain of ownership until it finally reaches the individual stockholders. This is in consonance with the "grandfather rule" adopted in the Philippines under Section 96 of the Corporation Code (Batas Pambansa Blg. 68) which provides that notwithstanding the fact that all the issued stock of a corporation are held by not more than twenty persons, among others, a corporation is nonetheless not to be deemed a close corporation when at least two thirds of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation. *(BIR Ruling Nos. DA-001-06 dated January 4, 2006 signed by then Commissioner Jose Mario C. Buñag and 035-99 dated March 25, 1999)*

Since the shareholders of RDS, consisting of more than 600,000 corporate and individual hundreds of individuals, are considered to indirectly hold 68.19% of the outstanding shares of PSPC through RDS' wholly-owned subsidiaries SPNV and SOI, PSPC cannot be considered as a closely-held corporation prior to its listing with the PSE. Accordingly, this Office is of the opinion as it hereby holds that the primary and/or secondary sale of PSPC's shares of stock through an initial public offering done through the facilities of the PSE will not be subject to the IPO tax. *(BIR Ruling Nos. 238-12 dated March 29, 2012; 148-10 dated December 17, 2010; DA 001-06 dated January 4, 2006)*

2. Sec. 127 (A) of the Tax Code of 1997, as amended, provides as follows:

> "SEC. 127. *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.* —
>
> (A) *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange.* — There shall be levied, assessed and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor."

The stock transaction tax shall be in lieu of the capital gains tax and the regular individual or corporate income tax under Sec. 127 (D) of the Tax Code of 1997, as amended, which provides:

> "(D) *Common Provisions.* — Any gain derived from the sale, barter, exchange or other disposition of shares of stock under this Section shall be exempt from the tax imposed in Sections 24(C), 27(D)(2), 28(A)(8)(c), and 28(B)(5)(c) of this Code and from the regular individual or corporate income tax. Tax paid under this Section shall not be deductible for income tax purposes."

Copyright 2020 CD Technologies Asia, Inc.

The sale of PSPC shares by its existing shareholders through the facilities of the Philippine Stock Exchange in connection with the secondary offering under PSPC's initial public offering is exempt from documentary stamp tax. Sec. 199 (e) of the Tax Code of 1997, as amended, states:

> SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> xxx xxx xxx
>
> (e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

On the basis of the foregoing, the sale of secondary shares by PSPC's existing shareholders as part of or in connection with PSPC's initial public offering will be subject to the stock transaction tax imposed under Sec. 127 (A) of the Tax Code of 1997, as amended, but is exempt from capital gains tax, corporate income tax and documentary stamp tax pursuant to Sections 127 (D) and 199 (e) of the same Code.

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 as null and void.

Very truly yours,

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

Copyright 2020 CD Technologies Asia, Inc.