**August 2, 2019**

# BIR RULING NO. 435-19

Sec. 29 (A) & (B) (2) (a) NIRC; RR 2-01;
BIR Ruling Nos. 1398-2018; 094-2013;
025-2002

*Sycip Gorres Velayo & Co.*
6760 Ayala Avenue
1226 Makati City

Attention: *AAA*

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Gentlemen :

This refers to your letter dated October 11, 2011 requesting on behalf of your client, Marubeni Philippines Corporation ("MPC"), for confirmation that although not "directly" owned by a publicly-held corporation, MPC is still exempt from Improperly Accumulated Earnings Tax (IAET) pursuant to Section 29 of the 1997 National Internal Revenue Code (Tax Code), as amended and implemented by Revenue Regulations (RR) No. 2-2001.

It is represented that MPC is a domestic corporation duly organized and existing under the laws of the Philippine with business address at 8th and 9th Floor, Locsin Building corner Ayala and Makati Avenues, Makati City. It is duly licensed to engage and carry on business of buying, selling, distributing, marketing at wholesale all goods, commodities, wares and merchandise of every kind and description in the Philippines with Securities and Exchange Commission (SEC) Registration Number AS096-001786.

It is further represented that one hundred percent (100%) of the shares of stock of MPC is wholly-owned by Marubeni Asean Pte. Ltd. (Marubeni-Singapore), a corporation duly organized and existing under the laws of Singapore, with business address at 16 Raffles Quay, #28-00 Hong Leong Building, Singapore 048587. A duly notarized Certification executed and signed by the Corporate Secretary of MPC, certifying that all of its shares of stock are owned by Marubeni-Singapore, was submitted to this office.

Furthermore, it is represented that Marubeni-Singapore is one hundred percent

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(100%) owned by Marubeni Corporation (Marubeni-Japan), a corporation organized and existing under the laws of Japan with principal office located at 4-2 Ohtemachi 1-chome, Chiyoda-ku, Tokyo, Japan. A duly notarized and authenticated copy of the Certification executed by the Director of Marubeni-Singapore, certifying that 100% of its shares are held by Marubeni-Japan, was also submitted.

It is further represented that Marubeni-Japan is a publicly-held corporation and duly listed in Tokyo Stock Exchange. In support of your request, you have submitted a duly notarized and authenticated copy of Certification executed by the Senior Executive Vice President and Member of the Board of Marubeni-Japan, certifying that: (1) It is a publicly-held corporation in Japan and duly listed in Tokyo Stock Exchange; (2) That the Corporation has 129,765 total number of stockholders in the corporation's record as of March 31, 2011; (3) That one hundred percent (100%) of the outstanding shares of stock (or 1,737,940,900 shares) of the Corporation are publicly listed in the Japanese Stock Exchange; and (4) That 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 twenty-one (21) individuals or more. Likewise, a copy of a duly notarized and authenticated Certificate issued by The Tokyo Stock Exchange signed by its President and CEO, certifying that Marubeni-Japan is a corporation listed therein and that the number of listed shares of the Company as of July 31, 2011 was 1,737,940,900, was also submitted.

Lastly, to support your position that MPC is a publicly-held corporation, you have submitted last July 30, 2013 a Certification executed by the Senior Managing Executive Officer and member of the Board of Marubeni-Japan, duly notarized by the Notary of Tokyo Legal Affairs Bureau and consularized by the Embassy of the Republic of the Philippines in Tokyo, certifying: (1) That the "Yukashoken Hokokuyso" or the Security Reports which is filed annually by Marubeni-Japan to the Kanto Local Finance Bureau (Local Bureaus of the Ministry of Finance of the Government of Japan) is the equivalent document of the General Information Sheet; (2) That the "Yukashoken Hokokuyso" or Security Reports shows the shareholdings of the different types of stockholders of Marubeni-Japan; and (3) That said shareholdings show that 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 twenty-one (21) individuals or more. Likewise, a copy of the Original Japanese Version of the "Yukashoken Hokokuyso" or Security Reports for the Fiscal Year 2012 as well as its English Translation which also shows that there is no change in the number of outstanding shares of stock of Marubeni-Japan from fiscal year 2011 (as shown by the certification of the Tokyo Stock Exchange) to fiscal year 2012, and the Notarized Certification of BBB who was responsible in translating the pertinent pages of the "Yukashoken Hokokuyso" or Security Reports all of which are consularized by the Philippine Embassy in Tokyo were also submitted.

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In reply thereto, please be informed that Section 29 (A) and (B) (2) (a) of the Tax Code on 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 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 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, 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 IAET shall not apply to, among others, publicly-held corporations.

Furthermore, Section 4 of Revenue Regulations 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

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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 MPC) 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 MPC is 100% owned by Marubeni-Singapore, which in turn is wholly-owned by Marubeni-Japan, MPC shall be considered as being owned by Marubeni-Japan shareholders.

In applying the foregoing principle, this Office holds that, MPC is exempt from the imposition of IAET even if it is not directly owned by Marubeni-Japan 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 Marubeni-Singapore owns 100% of the shares of MPC, and that since the ownership of Marubeni-Singapore is ultimately traced to Marubeni-Japan, 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. *(BIR Ruling No. 1398-2018 dated November 19, 2018)*

WHEREFORE, in view of the foregoing, this Office holds that MPC is considered a

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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 void.

Very truly yours,

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

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