REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Executive Order (EO) No. 2, Series of 2016;
BIR Ruling No. 1393-2018
OT- 0599-2020
OCT 20 2020

SHAW GOMEZ AND MARASIGAN LAW OFFICES
Unit 211, The Atrium of Makati, Makati Ayenue
Urdaneta Village, Makati City

Attention: ATTY. NERISSA L. MARASIGAN

Gentlemen:

This refers to your request on behalf of an undisclosed client for copies of the following documents pursuant to Executive Order (E.O.) No. 2, Series of 2016:

1. Letter of Puno and Puno Law Offices, signed by Attys. Ma. Elizabeth E. Peralta-Loriega and Gracejenn Vizcarra Giron, and basis of BIR Ruling No. DA-327-07 dated June 14, 2007;

2. Letter of Romulo Mabanta Buenaventura Sayoc & De Los Angeles, signed by Attys. Perry L. Pe and Jayson L. Fernandez, and basis of BIR Ruling No. DA-005-08 dated January 9, 2008;

3. Letter of IP Converge Data Center, Inc., signed by Atty. Rhodaline Regoso-Jumamil, as basis of BIR Ruling No. 148-10 dated December 17, 2010; and

4. Letter of i-Pay Commerce Ventures, Inc. signed by Mr. Alejandro James A. Chiongbian, as basis of BIR Ruling No. 238-12 dated March 29, 2012.

As stated in your letter, your undisclosed client intends to request for a ruling from the Bureau of Internal Revenue (BIR) that the Corporation is not a "Closely Held Corporation" for purposes of Initial Public Offering Tax ("IPO Tax") under Section 127 (B) of the National Internal Revenue Code of 1997, as amended.

In reply, please be informed that Section 4 of E.O. No. 2, Series of 2016, states that:

> ***"Section 4. Exception.*** *Access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law or jurisprudence."*
>
> *The Department of Justice and the Office of the Solicitor General are hereby directed to prepare an inventory of such exceptions and submit the same to the Office of the President within thirty (30) calendar days from the date of effectivity of this Order.*
>
> *The Office of the President shall thereafter, immediately circularize the inventory of exceptions for the guidance of all government offices and instrumentalities covered by this Order and the general public.*
>
> *Said inventory of exceptions shall periodically be updated to properly reflect any change in existing law and jurisprudence and the Department of Justice and the Office of the Solicitor General are directed to update the inventory of*

exceptions as the need to do so arises, for circularization as hereinabove stated." (Underscoring supplied)

The Office of the President immediately circularized the inventory of exceptions for the guidance of all government offices and instrumentalities covered by the said Order and the general public, through a Memorandum from the Executive Secretary, dated November 24, 2016. One of the exceptions to the right of access to information, as recognized by the Constitution, existing laws, or jurisprudence, under the said Memorandum is:

> *"5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers."*

Hence, access to information under the E.O. No. 2, Series of 2016, is not all-encompassing as it provides for exceptions under Section 4 thereof. Moreover, Section 7 of E.O. No. 2, Series of 2016, even protects the right of privacy of individuals as it provides:

> ***"Section 7. Protection of Privacy.*** *While providing access to information, public records, and official records, responsible officials shall afford full protection to the right to privacy of the individual as follows:*
>
> *(a) Each government office per Section 2 hereof shall ensure that personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject-matter of the request and its disclosure is permissible under this order or existing law, rules or regulations;*
>
> *(b) Each government office must protect personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure of personal information which unduly exposes the individual whose personal information is requested, to vilification, harassment or any other wrongful acts; and*
>
> *(c) Any employee, official or director of a government office per Section 2 hereof who has access, authorized or unauthorized, to personal information in the custody of the office, must not disclose that information except when authorized under this order or pursuant to existing laws, rules or regulation."*

In view of the foregoing, we regret to inform you that this Office cannot grant your request pursuant to the exceptions to the right of access to information under E.O. No. 2, Series of 2016.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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