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

Sec. 29, NIRC & RR 2-2001
BIR Ruling No. 435-19 BIR Ruling No. 094-2013 BIR Ruling 25-2002
OT- 161-2021
OCT 04 2021

Platon Martinez Flores San Pedro
& Leaño Law Offices
6th Floor Tuscan Building
114 V.A. Rufino Street
Legaspi Village
1229 Makati City

Attention: **Atty. Anthony Brett M. Abenir**

Gentlemen:

This refers to your letter dated March 19, 2018 requesting on behalf of your clients, **Sandvik Philippines, Inc.** (SANDVIK) and **Sandvik Tamrock (Philippines), Inc.** (SANDVIK TAMROCK) for confirmation that:

1) Fifty percent (50%) of the issued and outstanding capital stock of **Sandvik** is owned by more than twenty (20) individuals, thus SANDVIK cannot be considered a closely-held corporation but rather a publicly-held corporation exempt from the imposition of Improperly Accumulated Earnings Tax (IAET) under Section 29 of the National Internal Revenue Code of 1997, as amended.

2) Fifty percent (50%) of the issued and outstanding capital stock of **Sandvik Tamrock** is owned by more than twenty (20) individuals, thus SANDVIK TAMROCK cannot be considered a closely-held corporation but rather a publicly-held corporation exempt from IAET under Section 29 of the National Internal Revenue Code of 1997, as amended.

Background

1. **Sandvik** (TIN: 000- 00) is a domestic corporation duly organized and existing under Philippine laws. Its primary purpose is "to engage in the marketing or general merchandising of Swedish quality steel and tungsten carbide products, finished or unfinished, and or any and all kinds of goods, wares and merchandise, at wholesale." It is located at Unit 1004 One Global Place Building, 5th Avenue, cor. 25th Street, Bonifacio Global City, Taguig City, Metro Manila.

Its authorized capital stock is PhP17,853,200.00 divided into 178,532 shares of stock with par value of PhP100.00 each. It is a foreign-owned subsidiary of **Sandvik South East Asia Pte. Ltd. (Sandvik SEA)**[1].

The following are the stockholders of record of SANDVIK[2]:

Name	***No. of Shares***
Sandvik SEA	178,527
Kenneth Chan Keng Lek	1
Lim Jiun Horng, John	1
Jose Pacis Flores	1
Carlos G. Platon	1
Rosario P. Balatbat	1
Total	178,532

2. **Sandvik Tamrock** (TIN:) is a domestic corporation duly organized and existing under Philippine laws. Its primary purpose is "to engage in trading, marketing, or general merchandising at wholesale, servicing or manufacturing of any and all kinds of equipment, goods, wares and merchandise." It is located at Unit 1004 One Global Place Building, 5th Avenue, cor. 25th Street, Bonifacio Global City, Taguig City.[3]

   Its authorized capital stock is Sixteen Million Pesos (PhP16,000,000.00) divided into One Hundred Sixty Thousand (160,000) shares of stock with par value of One Hundred Pesos (PhP100.00) each. It is a foreign-owned subsidiary of Sandvik Finance.[4]

   The following are the stockholders of record of Sandvik Tamrock[5]:

Name	***No. of Shares***
Sandvik Finance	152,599
George Yap III	1
Jose Pacis Flores	1
Carlos G. Platon	1
Hector A. Martinez	1
Rosario P. Balatbat	1
Total	152,604

3. **Sandvik SEA** is a Singaporean company located at 50 ALPS Avenue #04-00 Sandvik Building, Singapore. It is authorized to engaged in general wholesale trade including importers and exporters and wholesale on a fee or contract basis. It is a wholly-owned subsidiary of Sandvik Finance B.V. (Sandvik Finance). Its capital

[1] 2017 General Information Sheet (GIS) of Sandvik.
[2] 2017 General Information Sheet (GIS) of Sandvik.
[3] Amended Articles of Incorporation of Sandvik Tamrock.
[4] 2017 GIS of Sandvik Tamrock.
[5] Corporate Secretary's Certificate issued by Atty. Hector A. Martinez dated 22 February 2018.

structure are as follows[6]:

Issued Share Capital

Amount	***No. of Share***	***Currency***	***Share Type***
13,000,000	13,000,000	Singapore, Dollars	Ordinary

Paid-up Capital

Amount	***Currency***	***Share Type***
13,000,000	Singapore, Dollars	Ordinary

Shareholders

Name	***Nationality***	***No. of Share***	***Currency***
Sandvik Finance	Netherlands	13,000,000	Singapore, Dollars

4. **Sandvik Finance** is a corporation organized and existing in accordance with the laws of the Kingdom of the Netherlands with the official seat of the company in Schiedam, the Netherlands. The issued capital of the company is Eight Million Four Hundred Fifty-Four Thousand Six Hundred Euro (EUR8,454,600.00) comprising of Eighteen Thousand Four Hundred Eight (18,408) ordinary shares, having a nominal value of Four Hundred Fifty Euro (EUR450.00) each; and Three Hundred Eighty (380) Preferred Shares, having a nominal value of Four Hundred Fifty Euro (EUR450.00) each.[7]

   It is a wholly-owned subsidiary of Sandvik Aktiebolag (Sandvik AB)[8], to wit:

Stockholders	***No. of Shares Subscribed with Par value of EUR450/Share***	***% of Ownership***	***Position***	***Citizenship***
Sandvik AB	18,408	100%	Regular shares	Sweden
Sandvik AB	380	100%	Preference shares	Sweden

5. **Sandvik AB** is registered as a public limited liability company in Sweden with registered office in Stockholm, Sweden.[9] Its largest stockholders[10] are as follows:

   1. AB INDUSTRIV ÄRDEN 11.8%

[6] Authenticated Business Profile of Sandvik SEA extracted from lodgements filed with the Accounting and Corporate Regulatory Authority in Singapore.
[7] Authenticated Amendment to the Articles of Incorporation of Sandvik B.V. dated 1 July 2016.
[8] Authenticated Certificate issued by Peter Weber and Malika Algafafi.
[9] Authenticated e-Certificate of Registration of Sandvik Aktiebolag with the Swedish Companies Registration Office.
[10] Authenticated Euroclear Snapshot for Sandvik AB

2.	ALECTA PENSIONSFŐRSĂKRING, OMSESIDIGT	6.1%
3.	AMF – Fŏrsåkring och Fonder	2.7%
4.	Handelsbanken Pension	2.6%
5.	Swedbank Robur fonder	2.5%
6.	LUNDBERGFŎREGATEN AB, L E	2.4%
7.	SEB Investment Management	1.9%
8.	JPM CHASE NA	1.8%
9.	FJĂRDE AP-FONDEN	1.4%
10.	Nordea Investment Funds	1.4%
11.	Gŏranssonska Stifelserna	1.3%
12.	STATE STREET BK-WEST CLIENT/EXEMPT	1.2%
13.	STATE STREET BK-WEST CLIENT/TREATY	1.1%
14.	PENSIONKASSAN SHB FORSAKRINGSFORENING	1.0%
15.	LIVFŎRSĂKRINGSBOLAGET SKANDIA	1.0%
16.	CLEARSTREAM BANKING S.A., W81MY	0.9%
17.	CBNY-NORGES BANK	0.9%
18.	STATE STREET BANK & TRUST COM., BOSTON	0.9%
19.	Folksam	0.9%
20.	CARL BENNET AB	0.8%

6. SANDVIK and SANDVIK TAMROCK have no pending tax audit case.[11]

In reply, please be informed that Section 29 (B) of the Tax Code of 1997, as amended, and as implemented by RR No. 2-2001, provides that in addition to other taxes imposed by Title II of the Tax Code of 1997, as amended, there shall be imposed for each taxable year a tax equal to 10% of the improperly accumulated taxable income of corporations formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders.

Thus, this Office held in BIR Ruling No. 435-19 dated August 2, 2019:

"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.

[11] Certification from RDO 44, Taguig-Pateros dated July 6, 2020.

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(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.

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 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."

Stated differently, to be a publicly-held corporation, it is essential that 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 more than twenty (20) individuals. (Section 4, RR No. 2-2001)

This Office had occasion to rule that the ownership of a domestic corporation 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 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 a publicly-held corporation as the term is defined in RR No. 2-2001. (BIR Ruling No. 25-2002 dated June 25, 2002 and BIR Ruling No. 094-2013 dated March 18, 2013)

A perusal of the General Information Sheets (GIS) will show that SANDVIK is a domestic corporation which is 99.99% owned by Sandvik SEA which is a wholly-owned subsidiary of Sandvik Finance which, in turn, is a wholly-owned subsidiary of Sandvik AB. On the other hand, the GIS of SANDVIK TAMROCK will show that it is a domestic corporation which is 99.99% owned by Sandvik Finance which is a wholly-owned subsidiary of Sandvik AB.

Therefore, the ownership of SANDVIK and SANDVIK TAMROCK for purposes of determining whether these are closely-held corporations or publicly-held corporations is ultimately traced to the individual shareholders of Sandvik AB, the ultimate parent-company of both SANDVIK and SANDVIK TAMROCK.

Sandvik AB is a publicly listed company in Sweden. 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) or more individuals.[12]

Applying the above-cited test under Section 4 of RR 2-2001, SANDVIK and SANDVIK TAMROCK are publicly held corporations as contemplated under Section 29 (B) of the Tax Code of 1997, as amended, considering that: 1) Sandvik SEA owns 99.99% of the shares of SANDVIK; 2) Sandvik Finance owns 99.99% of the shares of SANDVIK TAMROCK; and 3) the ownership of Sandvik SEA and Sandvik Finance is ultimately traced to Sandvik AB, 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.

IN VIEW OF THE FOREGOING, this Office confirms your opinion that SANDVIK and SANDVIK TAMROCK are publicly held corporations exempt from the imposition of IAET under Section 29 (B)(2)(a) of the Tax Code of 1997, as amended.

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 null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[12] Authenticated Euroclear Snapshot of Sandvik AB for 2017.