INTERPRETATION OF THE TERM “ENGAGED IN PREFERRED AREAS OF ACTIVITIES” UNDER TAX TREATY ARTICLE ON ROYALTIES

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For the information and guidance of all internal revenue officers, employees and others concerned, the term "engaged in preferred areas of activities" used under Article 12 on Royalties of the tax treaty between the Republic of the Philippines and the Netherlands shall have the proper interpretation as provided in BIR Ruling No. 12-02 dated January 29, 2002, hereunder quoted, viz:

"In the absence of a definition of the term `engaged in preferred areas of activities' in the said tax treaty, it is therefore necessary to refer to Article 16 of Executive Order No. 226, as amended, otherwise known as the Omnibus Investments Code of 1987, which defines the term 'preferred areas of investments' as economic activities that the Board of Investments shall have declared as such in accordance with Article 28 of the said Code which shall either be pioneer or non pioneer.Moreover, it appears that the phrase `enterprise registered and engaged in preferred areas of activities' does not refer to PEZA-registered enterprises but to BOI-registered enterprises, because the RP-Netherlands Tax Treaty was signed on March 9, 1989, or prior to the effectivity of Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995.Thus, in applying Article 12 of the RP-Netherlands Tax Treaty, this Office already had the occasion to issue rulings where the phrase `enterprise registered and engaged in preferred areas of activities' consistently referred to BOI registered enterprise engaged in preferred areas of investments. (BIR Ruling No. 129-98 and ITAD Ruling No. 54-00)"

It should be noted that the term "enterprise registered and engaged in preferred areas of activities" is also found in the Philippine's tax treaties with Finland, Pakistan and Sweden and shall thus be given a similar interpretation as enunciated in BIR Ruling No. 12-02, having been signed respectively on January 1, 1982, January 1, 1979 and January 1, 1990, or prior to the effectivity of Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995. The same or similar phrase found in other tax treaties to which the Philippines is a signatory shall likewise be given the same interpretation.

All internal revenue officers, employees and others concerned are enjoined to give this Circular the widest publicity possible.

Adopted: 24 April 2002

(SGD.) RENE G. BAÑEZ
Commissioner of Internal Revenue

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