

July 27, 2005

Request for Letter Ruling  
N.Y.C. Commercial Rent Tax  
FLR No.: 054833-006

Dear \_\_\_\_\_ :

This ruling is in response to your request dated March 24, 2005 on behalf of \_\_\_\_\_ (the "Bank") for a ruling as to whether its representative office located at \_\_\_\_\_ is exempt from the New York City Commercial Rent Tax ("CRT"). Additional information was received on March 30, 2005 and June 9, 2005.

#### FACTS

The facts presented are as follows:

##### I. The Bank

The Bank is \_\_\_\_\_ central bank. \_\_\_\_\_ percent of the Bank's outstanding shares are owned by the Government of \_\_\_\_\_ ("Government"). The remaining shares are owned by various entities within the private sector. Under the \_\_\_\_\_ Law ("Bank Law") the private shareholders do not have the right to participate in the Bank's management or possess voting rights and the dividend rate on their shares may not exceed \_\_\_\_\_ percent. Pursuant to the Bank Law, in the case of liquidation, the private shareholders only have the right to request distribution of the remaining assets up to the sum of the paid-in capital and, if any, the special reserve. The Bank acts in accordance with government policy as directed by its policy board, whose members, including the governor of the Bank, are appointed by the cabinet with the consent of the House of \_\_\_\_\_ and the House of \_\_\_\_\_. Other key

executives of the Bank are also appointed by the Government. The Bank performs four basic functions:

- (A) It issues banknotes and provides for payment and settlement services;
- (B) It performs functions related to its role as the lender of last resort;
- (C) It develops and implements monetary policy; and
- (D) It provides treasury services to the Government.

#### A. Issuer of Banknotes and provider for payment and settlement services

The Bank ensures that banknotes are distributed smoothly throughout the country through financial institutions to meet the public's demand for cash. It ensures that the banknotes are in good condition and acts to prevent counterfeiting. The Bank accepts deposits only from institutions such as financial institutions (banks, securities companies, insurance companies and entities such as foreign exchange brokers), foreign central banks, international organizations and the Government as part of the Bank's implementation of its overall monetary policy. These deposits allow for the settlement of transactions between financial institutions or between the institutions and the Bank or the Government.

#### B. Lender of Last Resort

As a lender of last resort, the Bank provides funds temporarily to financial institutions that face difficulty raising funds from markets to reduce the systemic risk of a chain reaction of defaults that could occur when institutions might otherwise not find funding. In its role as a lender of last resort, the Bank monitors financial markets and the operations of individual financial institutions. It conducts on-site examinations of financial institutions. The Bank has increasingly cooperated with other central banks, such as the Federal Reserve Bank of the United States, in sharing information and preventing the materialization of systemic risks from defaults.

#### C. Monetary Policy

The Bank has a role similar to the Federal Reserve Bank of the United States in implementing monetary policy through its control over interest rates and the volume of money in the country. The Bank is responsible for the issuance, circulation, and maintenance of currency, and payment and settlement services. The Bank uses open market operations, which involve buying and selling securities, lending operations, and setting rates as part of their monetary policies. The Bank, as agent for the Government's Ministry of Finance, seeks to stabilize the foreign exchange market through foreign currency operations. Through these tools, the Bank strives to achieve price stability of goods in the country and stability of the country's currency in relation to other currencies.

#### D. Bank for the Government

As part of its banking services, the Bank accepts deposits from the Government and provides various services related to payment and receipt of the Government's money, such as the receipt of national taxes and the payments for public works and pensions. The Bank also provides services related to the issuance and settlement of the Government's securities.

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## II. The Bank's Representative Office

The Bank has a representative office in New York City employing     people.<sup>1</sup> You have represented that the office's only functions are (i) gathering information, (ii) performing research on economic and financial conditions and the financial system and financial markets; (iii) and acting as liaison between the Bank and U.S. monetary and banking authorities. The liaison services mainly consist of responding to any inquiries from the U.S. monetary and banking authorities regarding policy and other issues. The staff facilitates and conducts meetings between Bank officials and U.S. monetary and banking authorities.

You have represented that the representative office is not open to any foreign customers of the Bank, does not provide any services for     nationals or firms and is not engaged in soliciting new business or contracting for any deposit or deposit-like liability on behalf of the Bank. You also have represented that the representative office does not engage in commercial activities, generates no revenue and does not file U.S. federal tax returns. The Bank pays all the expenses of the representative office. You have also submitted copies of submissions by the Bank to the New York State Banking Department indicating that the representative office does not conduct a banking business in New York.

### ISSUE

You have requested a ruling that the Bank's representative office in New York City is exempt from the CRT.

### CONCLUSION

Based on the facts and representations submitted we have determined that the Bank's representative office is exempt from the CRT because it is not used for commercial activities.

### DISCUSSION

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<sup>1</sup> The Bank also has     other representative offices located outside New York City performing functions similar to those of the New York office.

Under section 11-702 of the Administrative Code of the City of New York (the “Code”) the CRT is imposed on the base rent for taxable premises within the City. Taxable premises are defined in part as, “any premises in the city occupied, used or intended to be occupied or used for the purpose of carrying on or exercising any trade, business, profession vocation or commercial activity...” Code §11-701.5. Premises not devoted to, or intended for, use in commercial activities are not taxable premises. Title 19 Rules of the City of New York §7-01 “Taxable Premises”.

The Code does not contain a specific exemption for a foreign governmental entity. However, consistent with established principles of international law, an exemption from the CRT will be granted if the foreign government or governmental entity is not engaged in commercial activities and is engaged solely in fulfilling a governmental or public purpose and. See Matter of Irish International Airlines (Levine), 48 A.D. 2d 202 (3<sup>rd</sup> Dep’t 1975), affirmed 41 N.Y. 2d 819 (1977); Republic of Argentina v. City of New York, 25 N.Y. 2d 252 (1969).

In determining whether the Bank is engaged solely in public or governmental activities and, thus, is not engaged in commercial activities, the activities of the Bank both in and New York City must be considered. The analysis of the Bank’s activities in is required because if the Bank’s activities in the City are in furtherance of the Bank’s commercial activities in , the Bank’s activities in the City would have a commercial purpose. If the Bank does not engage in any commercial activities in or elsewhere, then clearly the New York City activities cannot be deemed to be in furtherance of a commercial purpose.

The Bank is the central bank of performing governmental functions similar to those performed by the Federal Reserve Bank of the United States in regulating the cash supply, interest rates and ensuring that the monetary system functions smoothly. Although not wholly owned by the Government, the Bank was created by statute and is managed and operated under the Bank Law. The Bank acts in accordance with governmental policy as directed by its policy board, the members of which are appointed by the Government. The private shareholders of the Bank occupy a position similar to that of bondholders rather than equity holders. The private shareholders do not have a voice in management or voting rights and have no role in the Bank’s policy or actions. Like bondholders, the Bank’s private shareholders have a limited opportunity for profit because of the limited rate of return on their equity.

The New York City representative office performs research on economic and financial conditions in the United States and New York and acts as liaison between the Bank’s home office and U.S. monetary and banking authorities in support and furtherance of the Bank’s governmental purpose.<sup>2</sup>

Based on the information and representations submitted, it is our opinion that the Bank’s

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<sup>2</sup> Similarly, because the other representative offices perform functions similar to those of the New York City office, their activities also are deemed to be in furtherance of the Bank’s governmental purpose and not of a commercial nature.

activities are limited to those that are public or governmental in character and, consequently, the Bank's representative office in the City is not engaged in commercial activities. Therefore, the premises occupied by that office are not taxable premises subject to the CRT.

The Department reserves the right to verify the facts submitted.

Very truly yours,

Ellen E. Hoffman  
Assistant Commissioner, Tax Law & Conciliations

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