REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Sec. 28 (B)(5)(b), Tax Code
BIR Ruling No. ITAD 004-23
OT- 007-2024
JAN 24 2024

Sycip Salazar Hernandez & Gatmaitan
SyCip Law Center, 105 Paseo de Roxas
Makati City

Attention: **Atty. Hiyasmin H. Lapitan**

Atty. Javierose M. Ramirez

Gentlemen:

This refers to your request for a ruling confirming that cash distributions received by **Mercury Media Holdings Finance I, Ltd.** ("**Mercury Media**") arising from Philippine Depository Receipts ("PDRs") issued by **ABS-CBN Holdings Corporation** ("**ABS Holdings**") over shares of stock in **ABS-CBN Corporation** ("**ABS-CBN**") are cash dividends for Philippine income tax purposes; and subject to the tax sparing rate of 15%.

Background

1. ABS-CBN and ABS Holdings are corporations organized and existing under Philippine law.

2. Mercury Media, formerly CIPEF (Cayman) Crunch Finance, Ltd., is a nonresident foreign corporation organized and existing under the laws of the Cayman Islands. It has no legal presence in the Philippines as evidenced by the Certificate of Non-Registration issued by the Securities and Exchange Commission ("SEC").

3. ABS Holdings owns common shares in the capital stock of ABS-CBN (each an "Underlying Share"). One share of ABS Holdings in ABS-CBN corresponds to one PDR. A PDR confers on its holder the following economic rights over the Underlying Shares, as stated in the Philippine Deposit Receipt Instrument dated October 15, 1999 ("PDR Instrument"):

   A. Right to receive cash distributions upon the declaration of cash dividends by ABS-CBN or similar distributions relating to the Underlying Shares;

B. Right to demand the delivery to the PDR holder of the Underlying Shares, or to cause the sale of the Underlying Shares; and

C. Right to receive additional PDRs or to an adjustment to the terms of the PDRs upon the occurrence of certain events.

4. On August 26, 1999, ABS Holdings authorized the issuance and offer for sale of shares through a Board Resolution.

5. On October 5, 1999, ABS Holdings issued PDRs to Mercury Media.

6. Under Section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, Mercury Media and its operations are not subject to any law enacted in the Cayman Islands imposing any tax on profits, income, gains or appreciations. In addition, Mercury Media is exempt from tax on profits, income, gains or appreciations on or in respect of the shares, debentures or other obligations of Mercury Media. The entitlement of Mercury Media to exemption in the Cayman Islands from taxes on dividends is provided in the Tax Concessions Law (2011 Revision) Undertaking as to Tax Concessions issued by the governor in Cabinet of the Cayman Islands on January 3, 2013.

7. At a regular meeting of the Board of Directors on February 22, 2017, ABS-CBN declared cash dividend of and (P per common share to all common stockholders of record as of March 8, 2017 which cash dividend shall be paid on March 22, 2017.[1]

Discussion/Ruling

Under Section 28(B)(5)(b) of the Tax Code, dividends paid by a domestic corporation to a nonresident foreign corporation ("NRFC") are subject to income tax of 15% provided that the country of residence of the NRFC shall allow a tax credit against the tax due from the NRFC taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%).

This tax deemed paid tax credit represents the difference between the regular income tax (30%) on corporations under Section 28(B)(1) of the Tax Code, and the lower tax (15%) on dividends under Section 28(B)(5)(b) thereof.

Based on the above-quoted Tax Code provision, the reduced rate of 15% shall be imposed provided the following requisites are present:

1. the NRFC must have received dividends from a domestic corporation; and
2. the country of residence of the NRFC allows a credit against the tax due from the NRFC taxes deemed to have been paid in the Philippines equivalent to 15%.

[1] Secretary's Certificate dated March 1, 2017

The cash distributions are not dividends

In order to determine whether the cash distributions received by Mercury Media from ABS Holdings are considered dividends for tax purposes, Section 73(A) of the Tax Code must be read in conjunction with Section 22(M).

Section 73(A) of the Tax Code defines the term "dividends" as any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders. On the other hand, Section 22(M) thereof defines the term "shareholder" as holders of a share/s of stock, warrant/s and/or option/s to purchase shares of stock of a corporation, as well as a holder of a unit of participation in a partnership (except general professional partnerships) in a joint stock company, a joint account, a taxable joint venture, a member of an association, recreation or amusement club (such as golf, polo or similar clubs) and a holder of a mutual fund certificate, a member in an association, joint-stock company, or insurance company. It may be inferred from the foregoing definitions that a PDR holder may be considered a shareholder and a recipient of dividends if he/she/it has an option to purchase the shares underlying the PDR.

A careful reading of Condition 5.2, in relation to 5.3, of the subject PDR instrument leads us to the conclusion that Mercury Media cannot be considered a shareholder entitled to receive dividends. Condition 5.2 mentions the rights of the PDR holders while Condition 5.3 explains further the conditions for the exercise of these rights as well as the obligations of the issuer, the PDR holder and the eligible broker in case of delivery or sale of the underlying shares, to wit:

> "5.2 Each PDR grants unto the Holder, subject to the provisions of this Instrument, the right to:
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> i) Delivery to the Holder of the Shares or sale and payment to the Holder of the net proceeds from the sale of Shares as set out in Condition 5;
> ii) Certain cash distributions as set out in Condition 9; and
> iii) Additional PDRs or adjustments to the terms of the PDRs upon the occurrence of certain events as set out in Condition 10.
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> 5.3 The PDR Exercise Right is exercisable on any Business Day upon payment of the Exercise Price and compliance with Condition 6, and entitles the Holder to delivery by the Issuer through an Eligible Broker of the corresponding number of Shares (subject as provided in Condition 6 and to the issuance of additional PDRs or adjustment in accordance with Condition 10), to or to the order of the Holder: **provided, however, that if the person to whom the Shares are to be delivered upon exercise of a PDR is not a person to whom delivery of the Shares is permitted under Philippine law and certification that such person is permitted under Philippine law to own the Shares is not obtained, the Holder hereby irrevocably authorizes the Issuer and the PDR Agent to and the Issuer shall: a) deliver the Shares to an Eligible Broker together**

with an irrevocable instruction to effect the sale of the Shares in the open market and b) remit the net proceeds of such sale to or to the order of the Holder in accordance with the Exercise Notice. The Issuer's obligations in respect to a PDR Exercise Right are discharged in the case of delivery pursuant to an exercise, upon delivery of the Shares to the Holder and in the case of a sale pursuant to an exercise, upon the sale of the Shares through such Eligible Broker in accordance with Exercise Notice." (Emphasis supplied)

The exercise of the first mentioned right is subject to the condition under 5.3 of the PDR Instrument that the person to whom the shares are to be delivered is a person permitted under Philippine law to own the underlying shares. In other words, if the PDR holder is allowed by law to own the underlying shares, he/she/it may exercise the option to purchase the said shares and compel the delivery thereof upon payment of the exercise price. If, on the other hand, the PDR holder is not permitted under the law to own the said shares, he/she/it cannot compel the delivery thereof but is obliged to accept instead the net proceeds of the sale of these shares in an open market.

It must be emphasized that Section 11(1), Article XVI (General Provisions) of the 1987 Philippine Constitution restricts the ownership and management of mass media, like ABS-CBN, to Filipino citizens or to corporations, cooperatives or associations wholly-owned and managed by such Filipino citizens.

Considering that Mercury Media is not a corporation wholly-owned and managed by Filipino citizens, it cannot, therefore, own and does not have any option or right to purchase or own, any share of a corporation the ownership and management thereof is restricted by law to Philippine nationals and corporations wholly-owned by Philippine nationals. Contrary to your claim, Mercury Media does not have a legal right or option under the PDR instrument to purchase the underlying ABS-CBN shares. Mercury may have the right to sell the underlying shares in an open market, through an eligible broker, and the right to compel the delivery of the proceeds of such sale, but not the right to purchase the underlying shares. Hence, Mercury Media cannot, by any stretch of imagination, be considered a shareholder of ABS-CBN and the PDRs cannot be considered shares of stock.

It bears stressing that before the PDR holder may be considered a shareholder under the Tax Code, he/she/it must have an option to purchase the shares underlying the PDRs coupled with a legal right to exercise the same without violating the provisions of the Constitution and special laws. Again, if the ownership of the underlying shares is reserved to Philippine nationals, the foreign PDR holder cannot legally exercise the right to purchase the underlying shares but is only entitled to the monetary value or sales proceeds thereof.

What is more glaring in this case is that the cash distributions are akin to interest payments. Based on the PDR Instrument, the PDRs issued to Mercury Media are unsubordinated and unsecured obligations of ABS Holdings and any amount received from Mercury Media upon the issuance of the PDRs is considered by ABS Holdings as a

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deposit, secured by its shares in ABS-CBN. As such, the cash distributions made by ABS Holdings to Mercury Media may properly be classified as, or may take the form of, interest rather than dividends.

In view of the foregoing, the cash distributions received by Mercury Media from ABS Holdings are not cash dividends subject to 15% under Section 28(B)(5)(b) of the Tax Code but are interest subject to 30% under Section 28(B) thereof.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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