**February 18, 2021**

# BIR RULING NO. OT-027-21

Sec. 28 (B) (5) (b), Tax Code of 1997; BIR Ruling No. 630-12; BIR Ruling No. 304-2011; BIR Ruling No. 057-2012; BIR Ruling No. 410-12

*Sycip Gorres Velayo & Co.*
6760 Ayala Avenue
1226 Makati City

Attention: *AAA*

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Gentlemen :

This refers to your letter dated June 7, 2013 requesting for a confirmation of your opinion that the dividends to be paid by Philexcel Business Park, Inc. ("Philexcel") to Intercredit Corporation ("Intercredit"), a non-resident foreign corporation based in the Island of Nevis, West Indies, are subject to 15% final withholding tax under Section 28 (B) (5) (b) of the Tax Code of 1997, as amended.

The facts, as can be drawn from the records, show that Philexcel is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Registration No. ASO95-003663. Philexcel was originally incorporated as "Philexcel Textile, Inc." before it changed its corporate name into "Philexcel Industrial Park, Inc." on November 10, 1997 and later into "Philexcel Business Park, Inc." on March 26, 2002.

On the other hand, Intercredit, is a non-resident foreign corporation domiciled in the Island of Nevis, West Indies. Per records of the SEC, the corporation was certified as not being registered as a corporation or partnership in the Philippines. [1] It appears that the Articles of Incorporation of Intercredit was originally filed with the Registrar of Companies in the British Virgin Islands on the 9th day of July 1993 under the name Masterton Enterprises Limited. The corporation was renamed Excel Textiles Inc. on or about the 20th day of July 1993, and was redomiciled to Nevis and renamed Intercredit Corporation on the

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22nd day of October 1997. Amendments to the Articles were filed on the 3rd day of July 2013. [2] On July 24, 2013, the Inland Revenue Department of the Nevis Island Administration issued a certification stating that Intercredit Corporation is exempt from tax in Nevis as long as it does no business in Nevis in accordance with the terms of Section 122 (1) [3] of the Nevis Business Corporation Ordinance, 1984, as amended which states:

> "Any corporation subject to this Ordinance which does no business in Nevis shall not be subject to any corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls, or other fees or taxes based upon or measured by assets or income originating outside of Nevis or in connection with other activities outside of Nevis or in connection with matters of corporate administration which may occur in Nevis, except as provided in sections 6 and 7 of Part I of this Ordinance."

On June 26, 2013, Philexcel declared cash dividends in the total amount of Twenty One Million Five Hundred Thousand Pesos (P21,500,000.00) from the unrestricted retained earnings of the Corporation recorded in its financial statements, payable on September 1, 2013. Intercredit Corporation, at the time of the declaration of cash dividends, owns 22,495 shares in Philexcel with a par value of P100 per share corresponding to 99.98% of the total outstanding capital stock of the Corporation. [4]

In reply, please be informed that Section 28 (B) (5) (b) of the Tax Code of 1997, as amended, provides that —

> "(B) Tax on Nonresident Foreign Corporation. —
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> xxx xxx xxx
>
> (5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation. —
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> xxx xxx xxx
>
> (b) *Intercorporate Dividends.* — A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, subject to the condition that the country in which the non-resident foreign corporation is domiciled, shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%), on dividends as provided in this subparagraph: Provided, that effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends."

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Under the said provision, it is provided that a final withholding tax at the lower rate of fifteen percent (15%) is imposed on cash dividends received by a non-resident foreign corporation from a domestic corporation, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%). In other words, the only condition for the application of the tax sparing credit is that the country-domicile of the recipient corporation allows a credit against the tax due from non-resident foreign corporation. [5]

In the instant case, Nevis Island does not impose any income tax on Intercredit Corporation. The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc.*, [160 SCRA 573 (1998)] has ruled that exemption from taxes by the country of domicile of the non-resident corporate stockholder on the dividends received is sufficient basis for the applicability of the 15% tax rate. Thus:

> "While it may be true that claims for refund are construed strictly against the claimant, nevertheless, the fact that Switzerland did not impose any tax on the dividends received by Glaxo from the Philippines should be considered as a full satisfaction of the given condition. For, as aptly stated by respondent court, to deny private respondent the privilege to withhold only 15% tax provided for under Presidential Decree No. 369 amending Section 24(b)(1) of the Tax Code, would run counter to the very spirit and intent of said law and definitely will adversely affect foreign corporation's interest here and discourage them from investing capital in our country."

Thus, the exemption from taxes in the country of domicile of non-resident corporate stockholder on the dividends received is sufficient for the applicability of the 15% tax rate.

Such being the case, this Office holds that the cash dividends declared on June 26, 2013 to be paid by Philexcel to Intercredit Corporation, a non-resident foreign corporation domiciled in Nevis, West Indies payable on or before September 1, 2013, are subject to the 15% final withholding tax as prescribed under Section 28 (B) (5) (b) of the Tax Code of 1997, as amended. *(BIR Ruling No. 304-2011 dated August 15, 2011; BIR Ruling No. 057-2012 dated February 9, 2013; BIR Ruling No. 410-12 dated 15 June 2012)*

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

**(SGD.) CAESAR R. DULAY**
*Commissioner of Internal Revenue*

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## Footnotes

1. Certification of Non-registration of Company dated November 5, 2013 issued by the Securities and Exchange Commission.
2. Restated Articles of Incorporation of Intercredit Corporation, p. 1.
3. Mentioned as Section 123 (i) of the Nevis Business Corporation Ordinance, 1984, as amended, in Certification dated May 30, 2014 issued by Inland Revenue Department of Nevis Island Administration.
4. Secretary's Certificate (Philexcel) dated September 25, 2013.
5. BIR Ruling No. 630-12 dated November 22, 2012.

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