May 4, 2021

BIR RULING NO. OT-156-21

Sec. 28 (B) (5) (b), 1997 Tax Code, as amended; BIR Ruling No. 317-18

Isla Lipana & Co.
29th Floor, Philamlife Tower
8767 Paseo de Roxas
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 21, 2013 requesting on behalf of your client, **ARISAIG ASIA CONSUMER FUND, LTD.** ("AACF") for confirmation that the cash dividends to be received by AACF from its investment in Universal Robina Corporation are subject to the fifteen percent (15%) final withholding tax (FWT) prescribed under Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997 (Tax Code), as amended.

As represented, AACF is a company duly organized and existing under the laws of the British Virgin Islands ("BVI") with address at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, BVI. It is not registered as a corporation or as a partnership in the Philippines.

The Commissioner of Inland Revenue of the British Virgin Islands issued a Certificate of Tax Exemption certifying that AACF is not subject to any provisions of the Income Tax Ordinance and the Stamp Law pursuant to Section 242 (1) and (3) of the BVI Business Companies Act of 2004.

AACF has shareholdings in offshore jurisdictions such as the Philippines, from which it receives recurring dividends from its investment in Universal Robina Corporation with office address at 43rd Floor, Robinsons Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City.

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On April 18, 2013, the Board of Directors of Universal Robina Corporation approved the declaration of a regular cash dividend in the amount of One Peso and Fifty Centavos (P1.50) per share and a special cash dividend in the amount of Ninety Centavos (P.90) per share from the unrestricted retained earnings of the Corporation, to all stockholders of record as of May 10, 2013 and payable on June 6, 2013.

You now request for confirmation that the cash dividends to be received by AACF from Universal Robina Corporation are subject to the 15% preferential final withholding tax rate prescribed in Section 28 (B) (5) (b) of the Tax Code, as amended.

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

"(B) Tax on Nonresident Foreign Corporation. —

xxx xxx xxx

(5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation. —

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."

Based on the foregoing Section, cash and/or property dividends received by a non-resident foreign corporation from a domestic corporation, collected and paid in accordance with Section 57 (A) of the Tax Code, as amended, are subject to a final tax rate of 15% of the total amount therefor, subject to the condition that the country in which the non-resident foreign corporation is domiciled allows a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to the rate of fifteen percent (15%) beginning January 1, 2009 of such dividend. *(BIR Ruling No. 494-12 dated July 31, 2012)*

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In the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc., 160 SCRA 573 [1988]* the Supreme Court had occasion to rule that exemption from taxes by the country of domicile of the non-resident corporate stockholder on 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."*

The above ruling was reiterated in the case of *Caltex (Philippines), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 4986 dated October 6, 1995, wherein it was held that the dividends remitted by a domestic corporation to a resident of Bermuda is subject to 15% withholding tax inasmuch as Bermuda does not impose any tax on dividends received by corporations domiciled therein, pursuant to the Exempted Undertaking Tax Protection Act of 1966.

Since the International Business Companies Ordinance of the Territory of the British Virgin Islands under which AACF was incorporated does not impose any tax on dividends received from foreign sources, which would include those received from Philippine corporations by foreign corporations domiciled therein, then said cash dividends received by AACF from Universal Robina Corporation is subject only to the preferential withholding tax rate of 15% imposed under Section 28 (B) (5) (b) of the Tax Code, as amended. [1]

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,

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

Footnotes

1. BIR Ruling No. 317-18 dated March 6, 2018.

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