REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 28(B)(5)(b), NIRC of 1997, as amended
BIR Ruling No. 333-2013; BIR Ruling No. 131-2013; BIR Ruling No. 114-2013; BIR Ruling No. 465-2012; BIR Ruling No. 292-2012
#116-2016
4-6-2016

GALLARDO SONGCO and ASSOCIATES
Unit 300 Valero Plaza,
124 Valero St., Salcedo Village,
1227 Makati City

Attention: **Atty. Raymund S. Gallardo**
Managing Partner

Atty. Joseph Shelner N. Songco
Partner

Gentlemen:

This refers to your letter dated 28 July 2014 requesting for the confirmation of your opinion that the cash dividends received by **GRATINGS DGA PTY. LTD ("GRATINGS")** from your client, **WEBFORGE PHILIPPINES, INC. ("WEBFORGE")** are subject to the preferential fifteen percent (15%) Final Withholding Tax (FWT) rate prescribed under Section 28(B)(5)(b) of the Tax Code of 1997, as amended.

It is represented that **WEBFORGE** is a corporation duly organized and existing under the laws of the Philippines with SEC Registration No. dated 26 June 1996 and with business address at Main Avenue corner Hologram Street, Light Industry & Science Park 1, Cabuyao, Laguna. **WEBFORGE** is also duly registered with Bureau of Internal Revenue with BIR Tax Identification Numbe

GRATINGS is a corporation duly organized and existing under the laws of Australia with Australian Company Number 058 390 579 issued by the Australian Securities and Investment Commission. It has principal address at Level 3, Building A, 11 Talavera Road, Macquarie Park, New South Wales, Australia. **GRATINGS** is not registered either as a corporation or as partnership in the Philippines and has not been issued any license to do business in the Philippines.

GRATINGS is the registered owner and stockholder of shares, with par value of Php per share and representing of the outstanding shares of **WEBFORGE.** On 6 May 2014, the Board of Directors of **WEBFORGE** declared

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cash dividends in the amount of Php531.975 per share. or an aggregate amount of Pesos (Php), in favor of all stockholders of record as of the close of business on 31 December 2013, which cash dividend shall be payable in one lump sum on or after 30 November 2014.

Based on the foregoing representation, you now request confirmation that cash dividends to be paid by **WEBFORGE** to **GRATINGS** based on the Board Directors meeting and resolution held on 6 May 2014 declaring cash dividends to all stockholders on record as of 31 December 2013 is subject to the preferential rate of 15% pursuant to Section 28(B)(5)(b) of the Tax Code of 1997, as amended.

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

> *"Sec. 28. Rates of Income Tax on Foreign Corporations.—*
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> *(B) Tax on Nonresident Foreign Corporation.—*
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> xxx xxx xxx
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> *(5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation.—*
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> xxx xxx xxx
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> *(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%) tax 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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> xxx xxx xxx

In stressing the rationale of the above-mentioned provisions, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc., G.R. No. L-68375 dated April 15, 1988,* ruled that—

> *". . . since the Swiss Government does not impose any tax on the dividends to be received by the said corporation in the Philippines, the condition imposed under the abovementioned section is satisfied. Accordingly, the withholding tax rate of 15% is hereby affirmed."*

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Prescinding from the above-cited provisions, it is undisputed that dividends received by non-resident foreign corporations from a domestic corporation shall be subject to a withholding tax of 15% of the dividends received 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 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends. Thus, if the country of domicile of the recipient corporation allows as credit against the tax imposable by it an amount equivalent to 20% of the dividends remitted to corporations domiciled therein, the dividends so remitted are subject to a withholding tax at the rate of 15% only.

In *BIR Ruling Nos. 333-2013 dated August 30, 2013; 131-2013 dated April 4, 2013; 114-2013 dated March 22, 2013; 465-2012 dated July 17, 2012; and 199-2012 dated March 21, 2013*, this Office confirmed that the cash dividends paid to a company organized and existing under the laws of Australia, by a company organized and existing under the laws of Philippines are subject to 15% final withholding tax provided under the Tax Code of 1997, as amended.

Moreover, under Section 23AJ of the Income Tax Assessment Act of 1936 of Australia, foreign dividends received in Australia are no longer included as taxable income but are treated as exempt, in which case then, no Philippine-sourced dividend income will be subject to tax in Australia against which a tax rebate may be claimed.

Based on the foregoing, we confirm your opinion that the cash dividends paid to **GRATINGS**, a company organized and existing under the laws of Australia, by **WEBFORGE** based on its Board of Directors Resolution dated 6 May 2014 declaring cash dividends to the stockholders of record as of 31 December 2013 and shall be payable in one lump sum on or after 30 November 2014, are subject to preferential rate of 15% pursuant to Section 28(B)(5)(b) of the Tax Code of 1997, as amended.

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.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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