October 22, 2018

BIR RULING NO. 1283-18

Sec. 28 (B) (5) (b), Tax Code; BIR Ruling
No. 004-07; DA-233-99

Riego De Dios Law Offices
28th Floor, Tower 2, The Enterprise Center
6766 Ayala Avenue corner Paseo de Roxas
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 13, 2013 requesting on behalf of your client, **BODHI INVESTMENTS LLC**, for confirmation of your opinion that cash dividends payable by IP Ventures, Inc., a domestic corporation to a Company domiciled in Mauritius are subject to tax at the rate of fifteen percent (15%) based on Section 28 (B) (5) (b) of the Tax Code of 1997, as amended.

Documents show that IP VENTURES, INC. (IPVI), with TIN: 000-000-000, is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines, with office address at 34th Floor, Tower II RCBC Plaza, Ayala Avenue, Makati City. It is registered with the Securities and Exchange Commission (SEC) under Company Registration No. CS201114019 issued on August 10, 2011.

On the other hand, BODHI INVESTMENTS LLC (BIL) is a nonresident foreign corporation organized and existing under the laws of Mauritius under The Companies Act of 2001. Further, BIL is a holder of a Category Global Business License as per Article 3 of its Constitution. It is a company resident in Mauritius for income tax purposes under the Income Tax Act as certified in the Tax Residence Certificate issued by the Mauritius Revenue Authority.

BIL has no permanent establishment in the Philippines and is not registered as a corporation in the Philippines per Certification of Non-Registration of Company issued by the Securities and Exchange Commission on March 6, 2013.

BIL is a shareholder of IPVI holding 124,982,747 preferred shares with a par value of PhP_____ per share. The said shareholdings represent ten percent (10%) of IPVI's total issued and outstanding shares. Based on the Secretary's Certificate dated July

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25, 2013, cash dividends in the amount of PhP_____ were declared during the December 5, 2012 regular meeting of the Board of Directors of IPVI to stockholders of record as of December 6, 2012.

In BIL's April 15 and September 4, 2013 letters addressed to the Mauritius Revenue Authority, clarification was sought on the taxability of dividends received by BIL, a holder of a Category I Global Business License from an investee company of Mauritius. In September 12, 2013 letter of the Mauritius Revenue Authority, the latter held that dividends received from companies resident in Mauritius are exempt from income tax by virtue of Item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act 1995 and that under Section 77 of the Income Tax (Foreign Tax Credit) Regulations of 1996, a company holding a Category I Global Business License in receipt of foreign dividends, is entitled to claim the actual foreign tax paid (or 80% of the local tax payable where no evidence of such tax is produced) as tax credit.

In reply thereto, please be informed that Section 28 (B) (5) (b) of the Tax Code of 1997, as amended by Republic Act No. 9337 provides —

"SEC. 28. Rates of Income Tax on Foreign Corporations. —

xxx xxx xxx

(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 nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident 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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Prescinding from the above-cited provision, it is undisputed that a final withholding tax at the lower rate of fifteen percent (15%) is imposed on cash dividends received by a nonresident foreign corporation from a domestic corporation, subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%).

In stressing the rationale of the above principle, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, 204 SCRA 377*, and later reiterated in *Singapore Telecom International Pte. Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 7406*, held that the preferential treatment of 15% of the final withholding tax on dividends received by a nonresident foreign corporation from a domestic corporation applies if the domiciliary law of the non-resident foreign corporation allows [a similar] tax credit for the taxes deemed paid in the Philippines.

The Supreme Court in *Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corp. (P&G) and Court of Tax Appeals (G.R. No. 66838, December 2, 1991)* had occasion to rule that dividends paid to a US resident shall be subject to fifteen percent (15%) dividend tax rate, as follows:

> "It is important to note that Section 34 (b)(1), NIRC, now Section 25 (b)(5)(B) of the Tax Code, does not require that the US must give a 'deemed paid' tax credit for the dividend tax (20 percentage points) waived by the Philippines in making applicable the preferred dividend tax rate of fifteen percent (15%). In other words, our NIRC does not require that the US tax law deem the parent-corporation to have paid the twenty (20) percentage points of dividends tax waived by the Philippines. The NIRC only requires that the US 'shall allow' P&G-USA a 'deemed paid' tax credit in an amount equivalent to the twenty (20) percentage points waived by the Philippines."

In BIR Ruling No. 004-07 dated February 19, 2007, this Office cited and applied ITAD Ruling No. 175-00 dated November 14, 2000 which reiterated the findings of the Supreme Court in the Procter and Gamble case, saying that it "has confirmed that Section 901 of the United States Internal Revenue Code meets the 20% deemed tax credit requirement provided under then Section 25 (b) (5) (B) of the 1993 Tax Code [now Section 28 (B) (5) (b)]."

Thus, the exemption from taxes of the dividends received by the country of domicile of the nonresident corporate stockholder is sufficient for the applicability of the 15% tax rate.

In the instant case, Mauritius Revenue Authority confirmed in its September 12, 2013 letter to BIL that dividends received from companies resident in Mauritius are exempt from income tax by virtue of Item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act 1995 and that under Section 77 of the Income Tax

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(Foreign Tax Credit) Regulations of 1996, a company holding a Category I Global Business License in receipt of foreign dividends, is entitled to claim the actual foreign tax paid (or 80% of the local tax payable where no evidence of such tax is produced) as tax credit.

In view of all the foregoing, this Office confirms your opinion that the dividends paid to BODHI INVESTMENTS LLC, a company organized and existing under the laws of Mauritius, by IP VENTURES, INC. to the extent of 10% of P_____ as declared under its Board Resolution dated December 5, 2012, are subject to 15% final withholding tax as prescribed in 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 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

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