**November 16, 2018**

# BIR RULING NO. 1365-18

Sections 28 (B) (5) (c), 175, all of the NIRC of 1997, as amended; BIR Ruling No. 363-14

*R.G. Manabat & Co.*
The KPMG Center, 9F
6787 Ayala Avenue,
Makati City

Attention: *AAA*

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Gentlemen :

This refers to your letter dated November 5, 2015 requesting confirmation of the tax consequences of the distribution of liquidating dividends consisting of shares of stock in a domestic corporation, by a non-resident foreign corporation to another non-resident foreign corporation.

It is represented that your client, Sumitomo Corporation (SC) is a foreign corporation organized and existing under the laws of Japan with registered address at Harumi Island Triton Square Office Tower Y, 8-11 Harumi 1-Chome, Chuo-Ku, Tokyo 104-8610, Japan. SC wholly owns Asian Steel Company Ltd. (ASC), also a foreign corporation organized and existing under the laws of Singapore with registered address at 10 Gul Circle, Jurong Town, Singapore 629566.

ASC is the registered owner of 8,998 shares of Saimsim Land, Inc. (SLI), a domestic corporation duly organized under Philippine laws. ASC is not registered as a corporation doing business in the Philippines, per certification issued by the Securities and Exchange Commission (SEC) dated 14 May 2015.

It is further represented that on 10 February 2015, ASC held an Extraordinary General Meeting wherein a Special Resolution was passed resolving the winding-up of ASC under Member's Voluntary Winding Up pursuant to Sec. 290 (1) of the Companies Act (Cap. 50) of Singapore.

On 2 April 2015, the liquidators issued First Interim Distribution of Surplus Asset in Specie to Contributory where the 8,998 shares in SLI of ASC shall be distributed in the form of liquidating dividends in favor of SC.

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Based on the foregoing, you now request confirmation of your opinion that:

1. The transfer of SLI shares from ASC to SC in the form of liquidating dividends is not subject to Philippine income tax including capital gains tax (CGT).

2. The transfer of SLI shares is subject to documentary stamp tax (DST) under Section 175 of the National Internal Revenue Code of 1997, as amended, at the rate of Php0.75 on each Php200 or fractional part thereof, of the par value of such stock sought to be transferred.

3. The capital gains or losses derived by SC from the receipt of the SLI shares is income or loss derived from source outside of the Philippines hence, SC being a non-resident foreign corporation is not subject to Philippine income tax.

In reply thereto, please be informed as follows:

1. A liquidating corporation does not realize gain or loss in the distribution of its remaining assets to its shareholders as a consequence of its liquidation. The transfer by the liquidating corporation of its remaining assets to its stockholders in exchange for the surrender and cancellation of the shares is not considered a sale. In BIR Ruling No. 363-14 dated 22 September 2014, this Office ruled that:

> *"**The transfer by the liquidating corporation of its remaining assets to its stockholders in exchange for the surrender and cancellation of the shares is not a sale**, hence the same is exempt from corporate income taxes, creditable withholding and documentary stamp taxes under Revenue Regulations No. 1-90, as amended by RR 6-2001 and further amended by RR 17-2003. **Thus, a liquidating corporation does not realize gain or loss in partial or complete liquidation**. (W.P. Fox & Sons, Inc., Petitioner vs. Commissioner of Internal Revenue, Respondent, 15 BTA 115; Jordan Petroleum Company, 13AFTR 2d 1692 (227 F. Supp. 174); JTS Brown & Son Company vs. Commissioner of Internal Revenue, 10TC 840) **Conversely, neither is a liquidating corporation subject to tax on its receipt of the shares surrendered by its shareholders pursuant to a complete or partial redemption**."* (Emphasis supplied)

Hence, the transfer of SLI shares from ASC to SC in a form of liquidating dividends is not subject to Philippine income tax, including capital gains tax.

2. The transfer of shares as liquidating dividends is subject to DST under Section 175 of the National Internal Revenue Code of 1997, as amended, to wit:

> *"Sec. 175. Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock. — On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of shares or certificates of stock in any association, company, or corporation, or transfer of such*

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*securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money, or for the future transfer of any stock, there shall be collected a documentary stamp tax of Seventy-five centavos (P0.75) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such stock x x x"*

Thus, the transfer of the SLI shares is subject to DST at the rate of P0.75 for every P200.00 of par value or a fractional part thereof.

3. In the case of *Wise & Co. v. Meer*, [1] the Supreme Court held that:

*"The transfer of shares by a stockholder to a corporation under liquidation in exchange for assets of the liquidated corporation is considered a sale."*

Thus, the stockholder may realize gain or loss on its receipt of liquidating dividends based on the difference between the fair market value of the assets received and acquisition cost of the shares surrendered to the liquidating corporation. However, the capital gain or loss is not taxable in the Philippines if both the stockholder and the liquidating corporation are non-resident foreign corporations because the gain or loss is considered derived from sources outside the Philippines. Section 23 (F) of the National Internal Revenue Code of 1997, as amended states that:

"***SEC. 23. General Principles of Income Taxation in the Philippines****. — Except when otherwise provided in this Code*:

xxx xxx xxx

*(F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.*"

In the instant case, SC will surrender its shares in ASC in exchange for the assets of ASC. Said surrender of shares is considered a sale whereby SC will realize capital gain or loss based on the difference between the fair market value of the liquidating dividends received and the cost to SC of the ASC shares. Considering however that the ASC shares surrendered are shares of stock of a nonresident foreign corporation, the capital gain or loss derived by SC is income or loss derived from sources outside the Philippines. Hence, SC being a nonresident foreign corporation is not subject to Philippine income tax on the said capital gain or loss. As a non-resident foreign corporation, SC is taxable only on income derived from sources within the Philippines.

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.

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Very truly yours,

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

## Footnotes

1. 78 Phils. 655 [1947].

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