November 19, 2018

BIR RULING NO. 1389-18

Sec. 28 (B) (5) (b), Tax Code; BIR Ruling No. 188-16

Cesar C. Cruz & Partners Law Offices
3001 Ayala Life-FGU Center
6811 Ayala Avenue
Makati City, 1227 Metro Manila

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 21, 2015 requesting on behalf of your client, **TSUKIDEN ELECTRONICS PHILIPINES, INC. (TKP)** for confirmation of your opinion that the dividends paid by TKP to **Tsukiden HongKong Ltd. (TKH)**, are subject to the fifteen percent (15%) final withholding tax under Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997, as amended (Tax Code).

As represented, TKP is a resident corporation registered with the Securities and Exchange Commission (SEC) with SEC Registration No. ASO92-008163 and with principal office at 124 North Science Avenue, SEPZ, Laguna Technopark, Biñan, Laguna.

TKP is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification No. 000-000-000-000.

TKP is a corporation which is majority owned (99.99%) by TKH, a Hong Kong based company with business address at Flat Rm. 2, 5/F Sai Wan Ho Plaza, 68 Shau Kei Wan Road, Hong Kong. TKH is not registered as a corporation or as a partnership in the Philippines. [1]

On August 24, 2015, the Corporation's Board of Directors unanimously approved a Resolution declaring a cash dividend of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (USD1,500,000.00) on the common stock of the corporation payable on October 30, 2015, to stockholders of record at the close of business on March 31, 2015 out of the

Copyright 2020 CD Technologies Asia, Inc.

retained earnings of the Corporation. By virtue of said resolution, cash dividends were to be paid to the following stockholders: [2]

Name of Stockholder	Shareholdings	Percent	Amount of Cash Dividend (Php)
Tsukiden HongKong Ltd.	2,944,256	99.986000	_____
BBB	150	0.000051	_____
CCC	83	0.000028	_____
DDD	83	0.000028	_____
EEE	83	0.000028	_____
FFF	14	0.000005	_____
TOTAL	**2,944,669**	**100.00**	_____

Under current tax laws and regulations of Hong Kong, dividends to be received by a resident of Hong Kong, such as TKH, from Philippine companies as foreign source income, are not subject to Hong Kong Profits Tax, and the Inland Revenue Department of the Government of Hong Kong Special Administrative Region treats all dividends received by residents of Hong Kong from foreign sources as non-taxable under Hong Kong Laws. [3]

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

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

xxx xxx xxx

(B) Tax on Nonresident Foreign Corporation. —

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

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

Copyright 2020 CD Technologies Asia, Inc.

> *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;"*** *(Emphasis provided)*

From the above provision of the Tax Code, a tax rate of 15% on the amount of the dividends is applicable where the country in which the recipient foreign corporation is domiciled allows a credit against the tax due from the recipient foreign corporation taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%).

This was clarified in the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc.*, G.R. No. L-68375 dated April 15, 1988, where the Supreme Court 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."

In applying the aforesaid section to a case involving dividends paid by a domestic corporation to a company incorporated under the laws of Hong Kong, dividends remitted to TKH, a nonresident foreign corporation domiciled in Hong Kong are subject only to the 15% withholding tax.

In view of the foregoing, this Office hereby confirms your opinion that the cash dividends in US Dollars to be paid by **Tsukiden Electronics Philippines, Inc.**, pursuant to its dividend declaration on August 24, 2015, to **Tsukiden HongKong Ltd.** payable on October 30, 2015, are subject to 15% final withholding tax under Section 28 (B) (5) (b) of the Tax Code.

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.

Copyright 2020 CD Technologies Asia, Inc.

Very truly yours,

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

Footnotes

1. See original copy of the SEC issued Certification of Non-Registration of Company dated September 16, 2015.
2. See Secretary's Certificate dated August 28, 2015.
3. See PKF Hong Kong Tax Guide 2013, PKF Worldwide Tax Guide 2013.

Copyright 2020 CD Technologies Asia, Inc.