REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 28(B)(5)(b) of the Tax Code of 1997, as amended
BIR Ruling No. 393-2013; BIR Ruling No. 364-2013; BIR Ruling No. 196-2013; BIR Ruling No. 304-2011
#141-2016
4-21-2016

CE CASECNAN II, INC.
24th Floor, 6750 Ayala Avenue, Makati
Metro Manila, Philippines

Attention: **Trinity S. Gatuz**
Director

Gentlemen:

This refers to your letter dated 8 May 2014 requesting an opinion as to whether the dividends to be remitted by **CE CASECNAN II, INC.** (CE II) to CE Casecnan Ltd. (CEL) are subject to the 15% preferential final withholding tax (FWT) rate under Section 28(B)(5)(b) of the Tax Code of 1997, as amended, otherwise known as the "tax sparing credit."

It is represented that CE II with TIN is a corporation duly organized and existing under the laws of the Republic of the Philippines with office address at 24th floor, 6750 Building, Ayala Avenue, Makati City; that the company was formed in January 7, 2003 with Company Registration No. ; and that its primary purpose is to acquire, hold, own and use for investment, or otherwise, sell or dispose of properties of every kind and description and whenever situated, as to the extent permitted by law.

CEL, on the other hand, is a company duly organized and existing under the laws of Bermuda with address at Clarendon House, 2 Church Street, Hamilton, HM11 Bermuda; that it is registered in the Registrar of Companies in the Islands of Bermuda an exempted company as certified by the Registrar of Companies of the Ministry of Business, Development and Tourism in its Certificate of Incorporation dated August 15, 1994 pursuant to Section 14 of the Bermuda Companies Act of 1981; that it owns 99.99% of the total issued and outstanding shares of stock of CE II; that CEL is a non-resident company as evidenced by a Certificate of Non-registration issued by the Securities and

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Exchange Commission (SEC) dated January 16, 2014; that CEL was issued Tax Assurance "that in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, then the imposition of any tax described herein shall not be applicable to such undertakings or to any of its operations or the shares, debentures or other obligations of the said undertakings"; and that pursuant to the internal policies of CE II, it regularly declares dividends to its stockholders and the remittance of dividends by CE II and its receipt by CEL is therefore a recurring transaction between the companies.

On 7 May 2014, CE II declared cash dividends in the amount of US$ as evidenced by a resolution of the Board of Directors authorizing the same, to be paid out to the stockholders of record as of 7 May 2014 no later than fifteen days from the actual receipt by CE II of its share in the dividends declared by CE Casecnan Water and Energy Company, Inc. (CE Cesacnan) during the board meeting held on 7 May 2014.

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

"(B) Tax on Nonresident Foreign Corporation. ---

xxx xxx xxx

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

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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."*

Under the said 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 non-resident foreign corporation from a domestic corporation, 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 fifteen percent (15%). In other words, the only condition for the application of the tax sparing credit is that the country-domicile of the recipient corporation allows a credit against the tax due from non-resident foreign corporations.

In the case of *CIR vs. Wander Philippines, Inc. (160 SCRA 573)*, which involves a similar issue, the Supreme Court held that:

> *"While it may be true that claims for refund are constructed strictly against the claimant, nevertheless, the fact that Switzerland did not impose any tax on the dividends received . . . 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."*

This was reiterated in *BIR Ruling No. 304-2011 dated August 15, 2011* which held that *"considering that Bermuda does not impose tax on dividends received by corporation domiciled therein pursuant to The Exempted Undertaking Tax Protection Act of 1966, this Office hereby confirms your opinion that dividends to be paid by IAC, a domestic corporation to IAHL, a non-resident foreign corporation domiciled in Bermuda, are subject to the 15% preferential withholding tax rate under Section 28 (B) (5) (b) of the Tax Code of 1997, as amended".*

Based on the representations and documents submitted including the Tax Assurance issued by the Ministry of Finance of Bermuda to CEL, this Office, guided by

the doctrine laid down by the Supreme Court as well as the cited BIR Ruling, hereby confirms that the cash dividends in the amount of US declared by CE II to be paid out to the stockholders of record as of 7 May 2014 no later than fifteen days from the actual receipt by CE II of its share in the dividends declared by CE Casecnan Water and Energy Company, Inc. (CE Casecnan) during the board meeting held on 7 May 2014, shall be subject to the 15% preferential final withholding tax rate under Section 28(B)(5)(b) of the Tax Code of 1997, as amended.

However, as to the subsequent dividend payments/remittances to be made by CE II to CEL, this Office cannot issue a blanket ruling to cover the same. *(BIR Ruling Nos. 393-2013 dated October 25, 2013; 364-2013 dated October 1, 2013; and 196-2013 dated May 21, 2013)*

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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