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

Section 28(B)(5)(b) 1997 Tax Code, as amended
BIR Ruling No. 004-07; BIR Ruling No. 494-12; BIR Ruling No. 492-12;
#176-2016
5-16-2016
Date

PEOPLEPLUS TECH, INC.
9F 6780 Building
6780 Ayala Avenue.
Makati City

Attention: **MARINELA P. DE AUSTRIA**
Corporate Secretary

Madam:

This refers to your letter dated August 10, 2015 requesting, on behalf of **PEOPLEPLUS TECH, INC.**, for the confirmation of your opinion that the payment of cash dividends by **PEOPLEPLUS TECH, INC.** to **ROEN TECHNOLOGY, LLC** is subject to the 15% preferential tax rate pursuant to Section 28 (B) (5) (b) of the Tax Code of 1997, as amended.

It is represented that **PEOPLEPLUS TECH, INC.** is a corporation duly organized and existing under the laws of the Philippines, registered with the Securities and Exchange Commission (SEC), with principal place of business at the 9F 6780 Building, 6780 Ayala Avenue, Makati City.

ROEN TECHNOLOGY, LLC formerly registered under the name Joy Technology, LLC, is a nonresident foreign corporation organized and existing under the laws of the State of Delaware with principal office address at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, USA 19801 and is not registered with the Securities and Exchange Commission as a foreign corporation engaged in trade or business in the Philippines as evidenced by a Certificate of Non-Registration of Company issued on November 22, 2013 by the Securities and Exchange Commission. **ROEN TECHNOLOGY, LLC** is a legal and beneficial owner of common shares with a par value of per share constituting ninety-nine percent (99%) of the outstanding shares of **PEOPLEPLUS TECH, INC.**

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On August 10, 2015, the Board of Directors of **PEOPLEPLUS TECH, INC.** approved and authorized the declaration of cash dividends amounting to Pesos per share to be taken from the Corporation's unrestricted retained earnings as of June 30, 2015 in favor of all of its stockholders of record as of June 30, 2015.

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.*** –
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> ***"(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%), 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."

Based on the foregoing Section, inter-corporate dividends received by a non-resident foreign corporation from a domestic corporation and collected and paid in accordance with Section 57 (A) of the Tax Code of 1997 are subject to final tax rate of 15% of the total amount thereof, subject to the condition that the country in which the non-resident foreign corporation is domiciled allows a tax credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to the rate of twenty percent (20%) [fifteen percent (15%) beginning January 1, 2009] of such dividend. *(BIR Ruling No. 494-12 dated July 31, 2012)*

The country of residence of the dividend recipient, **ROEN TECHNOLOGY, LLC** is the United States of America ("US"). The US Tax

Code allows such a credit on the amount of taxes paid or accrued to any foreign country, as provided in Sections 901 and 902 of its US Internal Revenue Code, thus:

> ***"SEC. 901. Taxes of foreign countries and of possessions of United States.*** –
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> (a) Allowance of credit. – If the taxpayer chooses to have benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of Section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under Sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under Section 26(b).
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> (b) Amount allowed. – Subject to the limitation of Section 904, the following amounts shall be allowed as the credit under subsection (a):
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> (1) Citizens and domestic corporations. – In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and
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> ***"SEC. 902. Deemed Paid Credit Where Domestic Corporation Owns 10% or More of Voting Stock of Foreign Corporation.*** –
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> (a) Taxes Paid by Foreign Corporation Treated As Paid by Domestic Corporation. – For purposes of this subpart, a domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of such foreign corporation's post-1986 foreign income taxes as

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(1) The amount of such dividends (determined without regard to section 78, bear to

(2) Such foreign corporation's post-1986 undistributed earnings.

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(c) Definitions and special rules. – For purposes of this section –

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(4) Foreign income taxes

(A) In general – The term "foreign income taxes" means any income, war profits taxes paid by the foreign corporation to any foreign country or possession of the United States."

In BIR Ruling No. 004-07 dated February 19, 2007, this Office ruled, as follows:

"b. With respect to the cash dividends on the preferred shares of stock held by KC, on the other hand, the same should be subject to the fifteen percent (15%) final withholding tax under Section 28 (B) (5) (b) of the Tax Code, as amended by R.A. No. 9337, viz.:

(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 represent the difference between the regular income tax of thirty-five percent (35%) and the fifteen (15%) 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;"

The tax on inter-corporate dividends is reduced by 20% from 35% to 15% subject to the above-mentioned condition. The tax deemed paid is adjusted to correspond to the decreasing corporate income tax rate. The law specifies that such tax credit for "taxes deemed paid in the Philippines", must, as a minimum, reach an amount equivalent to 20 percentage points which represents the difference between the regular 35% dividend tax rate and the preferred 15% rate. *(Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, G.R. 66838, December 2, 1991, BIR Ruling No. 492-12 dated July 30, 2012)* In other words, in the instant case, the reduced fifteen percent (15%) dividend tax rate is applicable if the US shall allow tax credit in favor of **ROEN TECHNOLOGY, LLC** for "taxes deemed paid in the Philippines" against its US taxes.

In the case of *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corp. (P & G) and Court of Tax Appeals* (G.R. 66838, December 2, 1991) the Supreme Court further ruled 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.
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> In BIR Ruling No. 175-00, the BIR reiterated the findings of the Supreme Court in the case of Procter and Gamble Philippines Manufacturing Corp. vs. Comm. of Internal Revenue (G.R. 66838), 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)]."
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> In this connection, therefore, dividends distribution by CCBPI on the preferred shares of stock held by KC shall be subject to the fifteen percent (15%) final withholding tax under Section 28 (B) (5) (b) of the Tax Code."

In view of the foregoing and the fact that **ROEN TECHNOLOGY, LLC** is a corporation organized, existing and residing under the laws of the United States of America, a country which allows a credit against the tax due from the non-resident corporation taxes deemed to have been paid in the Philippines, as clearly provided in the US Tax Code, this Office hereby confirms your opinion that the

cash dividends declared by **PEOPLEPLUS TECH, INC.** on August 10, 2015 and paid to **ROEN TECHNOLOGY, LCC** amounting to Php15,200 per share to be taken from the Corporation's unrestricted retained earnings as of June 30, 2015 in favor of all of its stockholders of record as of June 30, 2015 shall be subject to the preferential withholding tax rate of 15% pursuant to Section 28(B)(5)(b) of the Tax Code of 1997, as amended. *(BIR Ruling No. 004-07 dated February 19, 2007)* Please note that the tax exemption granted herein is only limited to such transaction.

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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