REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 28(B)(5)(b)
BIR Ruling No. 304-11
BIR Ruling No. 421-11
BIR Ruling No. 439-11
177-2016
5-16-2016

MANABAT SANAGUSTIN & CO.
9TH Floor, The KPMG Center,
Ayala Avenue, Makati City

Attention: **ATTY. MARIA GEORGINA J. SOBERANO**
Principal, Tax

Gentlemen:

This refers to your letter dated August 9, 2012, requesting on behalf of **LAPRAIRIE GROUP CONTRACTORS INTERNATIONAL LTD.** ("**LGCI**"), confirmation that cash dividends received by **LGCI** from **CE CASECNAN WATER AND ENERGY COMPANY, INC.** ("***CECWEC***") are subject to the preferential fifteen percent (15%) final withholding tax (FWT) rate under Section 28(B)(5)(b) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

It is represented that **LGCI** is a non-resident foreign corporation organized and existing under the laws of Barbados with registered business address at 2nd Floor, Building 2, Chelston Park, Collymore Rock, St. Michael, Barbados; that **LGCI** is not registered with the Securities and Exchange Commission (SEC) as a foreign corporation engaged in trade or business in the Philippines as evidenced by a Certificate of Non-Registration issued by the latter on January 24, 2012; that **LGCI** holds a total of 115,074 common shares, with par value of Php 1.00 each or a total Php n CECWEC, a domestic corporation with business address at 24th Floor, 6750 Building, Ayala Avenue, Makati City, Philippines; that **LGCI** has an equivalent to fifteen percent (15%) shareholding in CECWEC; that in a special meeting of the Board of Directors of CECWEC held on July 31, 2012 the Board resolved that of the cash dividends in the amount of USD to be distributed, the equivalent of 15% thereof or USD will be distributed and paid to **LGCI** on or before August 31, 2012; and

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that a certification is issued by the tax authorities of Barbados stipulates that dividends received by a resident Barbadian corporation are not subject to tax.

Based on the foregoing representations, you now request confirmation that cash dividends to be received by **LGCI** from **CECWEC** are subject to the fifteen percent (15%) preferential withholding tax rate prescribed in Section 28(B)(5)(c) of the Tax Code of 1997, as amended.

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

> **"SEC. 28. Rates of Income Tax on Foreign Corporation. –**
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> XXX XXX XXX
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> **(B)** ***Tax on Nonresident Foreign Corporation.*** **–**
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> XXX XXX XXX
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> **(b) Inter-corporate 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 conditions 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 bee 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."

Based on the afore-quoted provision, inter-corporate dividends received by a non-resident foreign corporation form a domestic corporation and collected and paid in accordance with Section 57(A) of the Tax Code of 1997, as amended, are subject to a final tax rate of fifteen percent (15%) of the total amount thereof, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a tax 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.

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In stressing the rationale of the above principle, it was held in the case of ***Commissioner of Internal Revenue v. Wander Philippines, Inc. (G.R. No. L-68375 dated April 15, 1988)***, 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 fifteen percent (15%) is hereby affirmed."

Thus in **BIR Ruling No. 304-11 dated August 15, 2011**, this Office ruled that:

> "In this case, the Department of Inland Revenue of the Government of Barbados has issued a Certification that **LGCI** will not be subject to tax on dividends from its non-resident affiliate in accordance with the provisions of the Income Tax Act Cap 73 Section 9 (1) (1) (iii), which stresses that:
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> "Calculation of Assessable Income: Amounts Not Included
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> 9. (1) In calculating the assessable income of a person for an income year, the following amounts shall not be included namely;
> (a) x x x
>
> (1) (i) x x x
> (ii) x x x
> (iii) in respect of income year 2007 and subsequent income years, amounts received by a resident company registered in Barbados as dividends, other than preference dividends from a non-resident company when the Barbados resident is a shareholder representing at least ten percent (10%) if the capital of the non-resident company and such shareholding is not held solely for the purpose of portfolio investments."

Hence, considering that LGCI holds more than ten percent (10%) of the capital of the non-resident company, the dividends received by it, as a company registered in Barbados, shall not be included in calculating the assessable income under the Income Tax Act of Barbados.

PREMISES CONSIDERED and for the reason that LGCI has been certified by the Barbadian Department of Inland Revenue that it will not be subject to tax on dividends received from its non-resident affiliate in accordance with the provisions of the Income Tax Act Cap 73 Section 9 (1) (1) (iii), this Office hereby confirms your opinion that the distribution and payment of fifteen percent (15%) of the USD or USD cash dividends to be received by **LAPRAIRIE GROUP CONTRACTORS INTERNATIONAL LTD.** From **CE CASECNAN WATER AND ENERGY CO. INC.** based on its Board of Directors Resolution on July 31, 2012,

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declaring cash dividends to the stockholders of record as of July 31, 2012, to be distributed and paid on or before August 31, 2012, are subject to fifteen percent (15%) final withholding tax imposed under Section 28 (B)(5)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended. (*BIR Ruling No. 304-2011 dated August 15, 2011; BIR Ruling No. 421-2011 dated November 4, 2011; and BIR Ruling No. 439-11 dated November 9, 2011)*

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 as null and void.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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