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. 511-2011
~~#188-2016~~ 5-16-2016

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

Attention: Atty. Maria Carmela M. Peralta
Principal, Tax

Gentlemen:

This refers to your letter dated December 18, 2012 requesting on behalf of your client, **Senju Solder (Phils.) Inc. (SSPI)**, for a confirmation of your opinion that the dividends paid by **SSPI** to **Senju Metal (Hong Kong) Ltd. (Senju HK)**, 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).

It is represented that **Senju HK** is a non-resident foreign corporation organized and existing under the laws of Hong Kong, and that **SSPI** is a domestic corporation duly organized and existing under the laws of the Philippines with business address at Phase 1 Block 9 Lot 6, PEZA, Rosario, Cavite, Philippines; that **Senju HK** is the registered owner of common shares, with par value of Php1.00 per share, representing 42.94% of the outstanding shares of **SSPI**; that on August 29, 2012, the Board of directors of **SSPI** declared out of its profits as of December 31, 2011 cash dividends in the aggregate amount of
to its stockholders of record as of December 31, 2011, including **Senju HK**, and payable on or before December 21, 2012 in the US Dollar equivalent, Dollars (US$; that Hong Kong, the country of domicile of **Senju HK**, operates on a territorial tax system wherein persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong from such trade, profession or business; that conversely, profits derived outside of Hong Kong are not subject to tax in Hong Kong. Considering that the dividends received by **Senju HK** from **SSPI** are profits derived from outside of Hong Kong, these are therefore not subject to tax in

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Hong Kong; and that Chapter 112 of the Hong Kong Inland Revenue Ordinance provides:

"Profits Tax

(1) Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part."

Based on the foregoing, you now request for the confirmation that the cash dividends to be paid by **SSPI** to **Senju HK** are subject to 15% final withholding tax pursuant to Section 28(B)(5)(b) of the Tax Code of 1997, as amended.

In support of your request, you submitted the following documents, to wit:

1. Original Certificate of Board Resolution, dated October 31, 2012, authorizing the declaration of dividends out of the unrestricted retained earnings as of December 31, 2011;

2. Photocopy of the Profit Tax File Certificate dated December 07, 2012 issued by Inland Revenue Department of Hong Kong;

3. Photocopy of the Business Registration Certificate with Certificate No. issued to **Senju HK**;

4. Photocopy of the Articles of Association of **Senju HK**;

5. A copy of Brief Guide to Taxes Administered by the Inland Revenue Department 2012-2013

6. Original Copy of Certification of Non-registration of **Senju HK**, dated October 17, 2012, issued by the Securities and Exchange Commission (SEC);

7. Certified True Copy of the General Information Sheet of **SSPI** issued and certified by SEC on March 24, 2014;

8. Certified True Copy of the Amended Articles of Incorporation of SSPI issued and certified by SEC on March 28, 2014;

9. Original Notarized Special Power of Attorney, dated October 30, 2012, issued by Hiroshi Koizumi of SSPI authorizing Manabat Sanagustin & Co., CPAs (now named R.G. Manabat & Co.) to handle the application for ruling;

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10. Original and Consularized Profit Tax File Certificate dated December 07, 2012 issued by Inland Revenue Department of Hong Kong;

11. Original and Consularized Copy of the Certification issued on December 19, 2012 by T.D. Tam & Company, a certified public accountant in Hong Kong; and

12. Certified True Copy of the application of **SSPI** with Rizal Commercial Banking Corporation, dated December 21, 2012, for the telegraphic transfer of **SSPI**'s payment to **Senju HK** amounting to USD .

In reply, please be informed that Section 28 (B)(5)(b) provides as follows:

> *"SECTION 28.Rates of Income Tax on Foreign Corporations. —*
>
> *"(B) Tax on Nonresident Foreign Corporation. -*
>
> *"(5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation. -*
>
> *"(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 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%.

Moreover, 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."

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In view of the foregoing, this Office hereby confirms your opinion that the cash dividends in the US Dollar equivalent to be paid by SSPI, pursuant to its dividend declaration on August 29, 2012, to Senju HK on or before December 21, 2012, are subject to 15% final withholding tax under Section 28 (B) (5) (b) of the Tax Code. (*BIR Ruling No. 511-2011* dated December 20, 2011)

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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