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

Sec. 28 (B) (5) (b) of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 292-2015; BIR Ruling No. 263-2015; BIR Ruling No. 004-2007
#025-2018
1-18-2018

SYCIP GORRES VELAYO (SGV) & CO.
6760 Ayala Avenue
1226 Makati City

Attention: ATTY. LUCIL Q. VICERRA
Principal, Indirect Tax Services

Gentlemen:

This refers to your letter dated September 01, 2015, requesting for confirmation that payment of cash dividends made by **PSG GLOBAL SOLUTIONS, INC. ("PSG")** to **PSG GLOBAL SOLUTIONS LLC ("PSG LLC")** is subject to the fifteen percent (15%) preferential tax rate pursuant to Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997, as amended.

Documents submitted disclosed that **PSG** is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines having its principal office address at 14th Floor, Multinational Bancorporation Centre, 6805 Ayala Avenue, Makati City; that on the other hand, **PSG LLC** is a non-resident foreign corporation duly organized and existing under the laws of the United States of America (USA), with principal address at 4223, Glencoe Ave., Suite B113, Marina Del Rey, CA 90292, and a resident of USA for purposes of US taxation per Certification issued by the Department of Treasury-Internal Revenue Service dated October 09, 2014; that it is not registered either as a corporation or as a partnership per Certificate of Non-Registration of Company dated June 26, 2015 issued by the Securities and Exchange Commission (SEC); that **PSG LLC** owns one hundred percent (100%) of the issued and outstanding capital stock of **PSG**; that on various dates in 2014, the Board of Directors of **PSG** declared cash dividends to its stockholders in the total amount of USD , all payable within thirty (30) days from date of approval of the respective board resolutions, with details as follows:

Date of BOD Meeting	Date of Secretary's Certificate	Details	Amount of Dividends (USD)
July 8, 2014	July 31, 2015	Stockholders of record as of June 30, 2014	
Aug. 7, 2014	Aug. 8, 2014	Stockholders of record as of July 31, 2014	
Sept. 5, 2014	Sept. 11, 2014	Stockholders of record as of August 31, 2014	
Sept. 17, 2014	Sept. 18, 2014	Stockholders of record as of August 31, 2014	
Dec. 11, 2014	June 3, 2015	Stockholders of record as of November 30, 2014	

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

"Sec. 28. Rates of Income Tax on Foreign Corporations. -

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(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."

The tax on intercorporate dividends is reduced by 20% from 35% to 15% subject to the conditions mentioned above. 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. [1] In other words, the reduced fifteen percent (15%) dividend tax rate is applicable if the USA shall allow tax credit in favor of **PSG LLC** for "taxes deemed paid in the Philippines" against its US taxes. ***(BIR Ruling No. 292-15 dated August 27, 2015)***

The Supreme Court in *Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corp. (P & G) and Court of Tax Appeals*[2] had the occasion to rule 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."

In *BIR Ruling No. 004-07 dated February 19, 2007*, this Office cited and applied ITAD Ruling No. 175-00 dated November 14, 2000 which reiterated the findings of the Supreme Court in the Procter and Gamble case, 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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[1] Commissioner of Internal Revenue vs. Pro[illegible]mble Philippine Manufacturing Corporation, G.R. 66838, December 2, 1991

[2] G.R. 66838, December 2, 1991

The pertinent provision of the US Tax Code in relation to the reduced tax rate of fifteen percent (15%) pursuant to the tax sparing provision of the National Internal Revenue Code of 1997, as amended, states:

"Section 901. Taxes of foreign countries and possessions of United States. -

(a) Allowance of credit. - If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the applicable 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 each taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) Amount allowed. - Subject to the applicable limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(a) 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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Section 902. Deemed paid credit where domestic corporation owns 10% or more of voting stock of foreign corporation. –

(a) Taxes paid by foreign corporation treated as paid by domestic corporation. - For purposes of this subpart, a domestic corporation which owns at least 10 percent 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 income taxes as –

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(1) the amount of such dividends bears to;

(2) such foreign corporation's undistributed earnings."

The above quoted provisions of the US Tax Code show that:

a. US tax law (Section 901) grants a tax credit for the amount of the dividend tax actually paid (i.e., withheld) from the dividend payments; and

b. US tax law (Section 902) grants a "deemed paid" tax credit for a proportionate part of the corporate income tax actually paid to the Philippines.

It is important to note that it is not required that the US must give a "deemed paid" tax credit for the dividend tax waived by the Philippines in making applicable the preferred 15% tax rate. The National Internal Revenue Code of 1997, as amended, only requires that the US

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"shall allow" a "deemed paid" tax credit in an amount equivalent to the twenty percent (20%) waived by the Philippines.

In view of the foregoing jurisprudence, precedent rulings, and the fact that this Office had already recognized that U.S. tax laws allow a credit against the tax due from the U.S. taxes deemed to have been paid in the Philippines equivalent to at least 20%, this Office hereby confirms your opinion that the amount of cash dividends received by **PSG LLC** from **PSG** is subject to 15% final withholding tax imposed under Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997, as amended. ***(BIR Ruling No. 263-15 dated July 30, 2015)***

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.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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