March 6, 2018

BIR RULING NO. 317-18

Sec. 28 (B) (5) (b) of the Tax Code of 1997, as amended; BIR Ruling No. 559-12; BIR Ruling No. 597-12

Isla Lipana and Co.
29th Floor, Philamlife Tower, 8767 Paseo de Roxas,
1226 Makati City, Philippines

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 21, 2013 requesting confirmation of your opinion that the cash dividends [1] received by your client **ARISAIG ASIA CONSUMER FUND, LTD**. (**"AACF"** for brevity) from its investment in Philippine Seven Corporation are subject to the fifteen percent (15%) final withholding tax (FWT) prescribed under Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997 ("Tax Code of 1997"), as amended.

It is represented that your client, **AACF**, is a company duly organized and existing under the laws of the British Virgin Islands ("BVI") with address at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, BVI; that it is not registered as a corporation or as a partnership in the Philippines per Certification of Non-Registration of Company issued by the Securities and Exchange of Commission (SEC); that as a BVI Business Company, the Commissioner of Inland Revenue of the British Virgin Islands issued a Certificate of Tax Exemption certifying that AACF is not subject to any provisions of the Income Tax Ordinance and the Stamp Law pursuant to Section 242 (1) and (3) of the BVI Business Companies Act of 2004; that **AACF** has shareholdings in offshore jurisdictions such as the Philippines, from which it receives recurring dividends from its investment in Philippine Seven Corporation; that on July 25, 2013, the Board of Directors of Philippine Seven Corporation approved the declaration of cash dividend in the amount of _____ (Php_____) per share on the outstanding capital stock of the Corporation of 398,639,411

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shares or equivalent to Php_____; that at the special meeting of the Board of Directors of the Corporation held at Emerald C, Level 4 Crowne Plaza Galleria Manila, Ortigas Avenue, Corner ADB Avenue, Quezon City, on 18 July 2013, at which meeting a quorum was present and voting throughout, the following resolutions were approved and adopted:

"xxx xxx xxx

b. Cash dividend

RESOLVED, that the Board of Directors of Philippine Seven Corporation (the "Corporation") hereby approve the declaration of cash dividend in the amount of _____ (Php_____) per share on the outstanding capital stock of the Corporation of 39,863,941.00. The record date for entitlement to said cash dividend shall be on August 15, 2013, which is not more than 30 days from the declaration and the payment date is on September 9, 2013, which is not later than 18 trading days from record date.

xxx xxx xxx"

that as of August 15, 2013, the record date for entitlement to cash dividends, **AACF** has a total number of shares of 41,756,833 in Philippine Seven Corporation; and that **AACF** shall receive cash dividends in the amount of P_____ (_____ x P_____ per share).

Based on the foregoing representations, you now request for confirmation that the cash dividends to be received by **AACF** from Philippine Seven Corporation are subject to the 15% preferential final withholding tax rate prescribed in Section 28 (B) (5) (b) 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 provides that —

"SEC. 28. Rates of Income Tax on Foreign Corporation. —

(B) Tax on Nonresident Foreign Corporation. —

xxx xxx xxx

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

xxx xxx xxx

(b) Intercorporate Dividends. — A final withholding tax at the rate of fifteen

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> 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;
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> xxx xxx xxx"

It is worthy to mention that in the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc.*, 160 SCRA 573 [1988] the Supreme Court had occasion to rule that exemption from taxes by the country of domicile of the non-resident corporate stockholder on dividends received, is sufficient basis for the applicability of the 15% tax rate. Thus:

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

The above ruling was reiterated in the case of *Caltex (Philippines), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 4986 dated October 6, 1995, wherein it was held that the dividends remitted by a domestic corporation to a resident of Bermuda is subject to 15% withholding tax inasmuch as Bermuda does not impose any tax on dividends received by corporations domiciled therein, pursuant to the Exempted Undertaking Tax Protection Act of 1966.

In view of the foregoing and the fact that **AACF** has been certified by the Commissioner of Inland Revenue of the British Virgin Islands 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 Ordinance and the Stamp Law pursuant to Section 242 (1) and (3) of the BVI Business Companies Act of 2004, this Office hereby confirms your opinion that the

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cash dividends, in the amount of P_____ to be received by **AACF** from Philippine Seven Corporation on the payment date provided in the Board Resolutions, are subject to 15% final withholding tax imposed under Section 28 (B) (5) (b) of the Tax Code of 1997, as amended.

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. The taxpayer's representative, in its letter dated August 31, 2016, clarified that the request for confirmation of opinion is for the cash dividends.

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