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

Sec. 28 (B)(5)(b) of the Tax Code of 1997, as amended.
BIR Ruling No. 442-13; BIR Ruling No. 629-12; BIR Ruling No. 057-12
#338-2016
6-29-2016

CE CASECNAN II, INC.
24TH Floor, 6750 Ayala Avenue,
Makati City 1226

Attention : **Ms. Trinity S. Gatuz**
Director

BUREAU OF INTERNAL REVENUE
RECEIVED
JUN 28 2016
LEGAL SERVICE

Gentlemen:

This refers to your letter dated July 23, 2013, requesting for confirmation of your opinion that dividend remittances of **CE Casecnan II, Inc. (CE II)** to **CE Casecnan Ltd. (CEL)** shall be subject to the 15% preferential final withholding tax rate under Section 28 (B)(5)(b) of the Tax Code of 1997, as amended, otherwise known as "tax sparing credit".

Documents submitted disclose that **CE II**, with Tax Identification No. [redacted] is a corporation organized and existing under the laws of the Philippines, with business address at 24th floor, 6750 Ayala Avenue, Makati City; that the Company was formed on January 7, 2003 primarily to acquire, hold, own and use for investment, or otherwise, sell or dispose of properties of every kind and description and whenever situated, as to the extent permitted by law; that **CEL**, on the other hand, is a company organized and existing under the laws of Bermuda with address at Clarendon House, 2 Church Street, Hamilton, HM11 Bermuda; that **CEL** is an exempt company as certified by the Registrar of Companies in its August 15, 1994 Certificate of Incorporation pursuant to Section 14 of the Bermuda Companies Act of 1981; that it owns [redacted] of the total issued and outstanding shares of stock of **CE II;** that **CEL** is a non-resident company as evidenced by a Certificate of Non-Registration issued by the Securities and Exchange Commission (SEC) dated April 30, 2013; that pursuant to its internal corporate policies, **CE II** regularly declares dividends to its stockholders; that the remittance of dividends by **CE II** and its receipt by **CEL** is therefore a recurring transaction between the companies; and that per **CE II's** Secretary's Certificate dated July 24, 2013, cash dividends in the amount of US$ [redacted] were declared during the July 23, 2013 meeting of the Board of Directors of the Corporation, to be paid out to the stockholders of record as of July 23, 2013, no later than fifteen (15) days from actual receipt by **CE II** of its shares in the dividends declared

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by CE Casecnan Water and Energy Company, Inc. during the board meeting held on July 22, 2013;

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

1. Original Consularized Certificate of Incorporation issued by the Registrar of Companies in Bermuda certifying **CEL** as an exempt company pursuant to section 14 of the Companies Act of 1981 and The Exempted Undertaking Tax Protection Act of 1966 dated August 15, 1994;

2. Certificate of Compliance of **CEL** issued by the Registrar of Companies in Bermuda dated January 18, 2012;

3. Original Consularized Assurance issued by the Minister of Finance of Bermuda to **CEL** that imposition of taxes shall not be applicable to **CEL** under the Exempted Undertakings Tax Protection Act effective until March 31, 2035;

4. Original Certificate of Non-registration of **CEL** issued by the SEC;

5. Original Board Resolution of **CE II** dated July 23, 2013, declaring the distribution of dividends to its stockholders, which includes the share of **CEL**;

6. Special Power of Attorney (SPA) authorizing **CE II** to prepare and file this request for ruling on behalf of **CEL** and SPA authorizing Trinity S. Gatuz to file this request for ruling for **CE II**;

7. Copy of Certificate of Incorporation, Articles of Incorporation and By-Laws of **CE II**; and

8. Copy of BIR Certificate of registration of **CE II.**

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 Corporations. —

xxx xxx xxx

(B) Tax on Nonresident Foreign Corporation. —

xxx xxx xxx

(5) Tax or 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%) 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;"

Under the said provision, it is undisputed that a final withholding tax at the lower rate of fifteen percent (15%) is imposed on cash dividends received by a non-resident foreign corporation from a domestic corporation, 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 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.

In stressing the rationale of the above principle, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, [204 SCRA 377 (1991)],* and later reiterated in *Singapore Telecom International Pte. Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 7406 dated April 7, 2009,* held that the preferential tax treatment of 15% of the final withholding tax on dividends received by a non-resident foreign corporation from a domestic corporation applies if the domiciliary law of the non-resident foreign corporation allows [a similar] tax credit for the taxes deemed paid in the Philippines.

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc., [160 SCRA 573 (1988)]* has ruled that exemption from taxes by the country of domicile of the non-resident corporate stockholder on the 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*

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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."

Thus, the exemption from taxes by the country of domicile of the non-resident corporate stockholder on the dividends received is sufficient for the applicability of the 15% tax rate.

In this case, **CEL** has received a written undertaking from the Minister of Finance in Bermuda under the Exempted Undertaking Tax Protection Act of 1966 that, in the event that any legislation is enacted in Bermuda imposing any tax computed on profits, income, gain or appreciation on any capital assets, or any tax in the nature of estate duty or inheritance tax, such tax will not be applicable to **CEL**, or any of its operations until March 28, 2016. The undertaking does not, however, prevent the imposition of taxes on any person ordinarily resident in Bermuda or any company in respect of its ownership of real property or leasehold interests in Bermuda.

Moreover, the Minister of Finance of the Government of Bermuda issued a Certification that Bermuda is not an Income Tax jurisdiction and persons residing therein are not subject to income tax. *(BIR Ruling No. 057-12 dated February 9, 2012)*

SUCH BEING THE CASE, this Office holds that cash dividends declared on July 22, 2013, to be paid by **CE II** to **CEL**, a non-resident foreign corporation domiciled in Bermuda, not later than fifteen (15) days from the actual receipt by **CE II** of its share in the dividends declared by CE Casecnan Water and Energy Company, Inc. during the board meeting held on July 22, 2013, are subject to the 15% final withholding tax as prescribed in Section 28 (B)(5)(b) of the Tax Code of 1997. *(BIR Ruling Nos. 629-12 dated November 22, 2012 and 442-13 dated November 27, 2013)*

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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JUN 24 2016

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