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

Sec. 28(B)(5)(b), Tax Code
BIR Ruling No. 188-16
OT- 0408-2020
JUL 24 2020

CESAR C. CRUZ & PARTNERS LAW OFFICES
3001 Ayala Life-FGU Center
6811 Ayala Avenue
Makati City, 1227 Metro Manila

Attention: **Atty. Cesar C. Cruz**

Gentlemen:

This refers to your letter dated September 21, 2015 requesting on behalf of your client, **TSUKIDEN GLOBAL CORPORATE SERVICES, INC. (TGCSI)** for confirmation of your opinion that the dividends paid by TGCSI to **Tsukiden HongKong Ltd. (TKH)**, 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).

As represented, TGCSI (formerly: LEI Global Corporate Services, Inc.) is a resident corporation registered with the Securities and Exchange Commission (SEC) with SEC Registration No. [redacted] and with principal office at 124 North Science Avenue, SEPZ, Laguna Technopark, Biñan, Laguna.

TGCSI is a corporation which is 36.00% owned by TKH, a Hong Kong based company with business address at Flat Rm. 2, 5/F Sai Wan Ho Plaza, 68 Shau Kei Wan Road, Hong Kong. TKH is not registered as a corporation or as a partnership in the Philippines.[1]

On August 20, 2015, the Corporation's Board of Directors unanimously approved a Resolution declaring a cash dividend of [redacted] (PhP [redacted]) or [redacted] per share on the common stock of the corporation payable on October 30, 2015, to stockholders of record at the close of business on March 31, 2015 out of the retained earnings of the Corporation. By virtue of said resolution, cash dividends were to be

[1] See original copy of the SEC issued Certification of Non-Registration of Company dated September 16, 2015.

paid to the following stockholders:[2]

Name of Stockholder	Shareholdings	Percent	Amount of Cash Dividend (PhP)
Tsukiden HongKong Ltd.	[illegible]	[illegible]	[illegible]
Tsukiden Electronics Philippines Inc. Retirement Fund	[illegible]	[illegible]	[illegible]
Edgardo B. Etac	[illegible]	[illegible]	[illegible]
Eric Pacual	[illegible]	[illegible]	[illegible]
Luzviminda Arcenas	[illegible]	[illegible]	[illegible]
Junichi Ito	[illegible]	[illegible]	[illegible]
Kazuma Hanzawa	[illegible]	[illegible]	[illegible]
Irene L. Campit	[illegible]	[illegible]	[illegible]
Senen M. Sarmiento	[illegible]	[illegible]	[illegible]
Toyojiro Nagai	[illegible]	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]	[illegible]

Under current tax laws and regulations of Hong Kong, dividends to be received by a resident of Hong Kong, such as THK, from Philippine companies as foreign source income, are not subject to Hong Kong Profits Tax, and the Inland Revenue Department of the Government of Hong Kong Special Administrative Region treats all dividends received by residents of Hong Kong from foreign sources as non-taxable under Hong Kong Laws.[3]

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

"SEC. 28. Rates of Income Tax on Foreign Corporations. –

x x x *x x x* *x x x*

(B) Tax on Nonresident Foreign Corporation. –

x x x *x x x* *x x x*

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[2] See Secretary's Certificate dated August 28, 2015.

[3] Paragraph 1.2, Hong Kong's schedular income tax system only levies taxes via profits tax, property tax and salaries tax on profits/income sourced in Hong Kong. As dividend income is not included in one of these schedules, dividends received by shareholders are not chargeable to tax. See Section 26(a) of Inland Revenue Ordinance (Cap. 112).

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

x x x x x x x x x

(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 fifteen percent (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%).

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."

In applying the aforesaid section to a case involving dividends paid by a domestic corporation to a company incorporated under the laws of Hong Kong, dividends remitted to THK, a nonresident foreign corporation domiciled in Hong Kong are subject only to the 15% withholding tax.

In view of the foregoing, this Office hereby confirms your opinion that the cash dividends in US Dollars to be paid by **Tsukiden Global Corporate Services, Inc.**, pursuant to its dividend declaration on August 20, 2015, to **Tsukiden HongKong Ltd.** payable on

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October 30, 2015, are subject to 15% final withholding tax under Section 28(B)(5)(b) of the Tax Code.

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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