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

Section 28(B)(5)(b) of the National Internal Revenue Code of 1997, as amended.
BIR Ruling No. 453-13; BIR Ruling No. 004-07
OT- 0532-2020

SEP 23 2020

AAP PROPERTY HOLDINGS COMPANY, INC.
#1 American Road, Greenfield Automotive Park
Special Economic Zone, Sta. Rosa
Laguna 4026

Attention: RODEL T. GALLEGA
VP- Finance

Gentlemen:

This refers to the letter of **AAP PROPERTY HOLDINGS COMPANY, INC.** **("AAP")** dated December 18, 2014, requesting for confirmation that the dividends to be paid by AAP to Ford Motor Company is subject to the fifteen percent (15%) final withholding tax (FWT) under Section 28 (B)(5)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, otherwise known as "tax sparing credit".

It is represented that **AAP** with Taxpayer's Identification No. (TIN) [redacted], is a corporation duly organized and existing under the laws of the Republic of the Philippines and having its principal place of business at No. 1 American Road, Greenfield Automotive Park — Special Economic Zone, Brgy. Don Jose, Sta. Rosa City, Laguna.

On the other hand, Ford Motor Company ("Ford US"), is a non-resident foreign corporation registered and existing under the laws of the United States of America (USA) with office at 1 American Road, Dearborn, MI 48126, USA; that it is not licensed to do business in the Philippines as evidenced by a Certificate of Non-Registration issued by SEC on November 20, 2014; and that it owns 40% of the outstanding shares of AAP.

On December 17, 2014, the Board of Directors of AAP declared cash dividends in the amount of Php [redacted] out of its unrestricted retained earnings payable on December 19, 2014 wherein Php [redacted] of the said amount will be payable to Ford US.

Based on the foregoing representations, you now request confirmation that the dividends to be paid by **AAP** to **Ford US** is subject to the fifteen percent (15%) preferential final withholding tax rate prescribed in Section 28 (B)(5)(b) of the NIRC of 1997, as amended.

In reply thereto, please be informed that Section 28 (B)(5)(b) of the NIRC of 1997, as amended, provides that:

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

xxx xxx xxx

(B) Tax on Nonresident Foreign Corporation. –

xxx xxx xxx

(b) Inter-corporate Dividends. – A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash

OT- 0532-2020
SEP 23 2020

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 conditions 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.

xxx xxx xxx"

Based on the above-quoted provision, inter-corporate dividends received by a non-resident foreign corporation from a domestic corporation and collected and paid in accordance with Section 57 (A) of the NIRC of 1997, as amended, are subject to final tax rate of 15% of the total amount thereof, subject to the condition that the country in which the non-resident foreign corporation is domiciled allows a tax credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to the rate of twenty percent (20%) [fifteen percent (15%) beginning January 1, 2009] of such dividend.[1]

The country of residence of the dividend recipients, Ford US, is the United States of America. The US Tax Code allows such a credit on the amount of taxes paid or accrued to any foreign country, as provided in Sections 901 and 902 of its US Internal Revenue Code, thus:

"SEC. 901. Taxes of foreign countries and of 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 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 such 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 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

xxx xxx xxx

SEC. 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

[1] BIR Ruling No. 453-13 dated November 27, 2013.

9

owns 10 percent or more 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 –

(1) the amount of such dividends bears to;
(2) such foreign corporation's undistributed earnings.

xxx xxx xxx

(c) Definitions and special rules. — For purposes of this section —

xxx xxx xxx

(4) Foreign income taxes

(A) In general — The term "foreign income taxes" means any income, war profits, or excess profits taxes paid by the foreign corporation to any foreign country or possession of the United States."

In BIR Ruling No. 004-07 dated February 19, 2007, this Office ruled as follows:

"b. With respect to the cash dividends on the preferred shares of stock held by KO, on the other hand, the same should be subject to the fifteen percent (15%) final withholding tax under Section 28 (B) (5) (b) of the Tax Code, as amended by R.A. No. 9337, viz.:

(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;

The tax on inter-corporate dividends is reduced by 20% from 35% to 15% subject to the above-mentioned condition. 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. (Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, G.R. 66838, December 2, 1991) In other words, in the instant case, the reduced fifteen percent (15%) dividend tax rate is applicable if the US shall allow tax credit in favor of KO for "taxes deemed paid in the Philippines" against its US taxes.

The Supreme Court in Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corp. (P&G) and Court of Tax Appeals

OT-0532-2020
SEP 23 2020

(G.R. 66838, December 2, 1991) had occasion 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. 175-00, the BIR reiterated the findings of the Supreme Court in the case of Procter and Gamble Philippines Manufacturing Corp. vs. Comm. of Internal Revenue (G.R. No. 66838), 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)].

In this connection, therefore, dividends distribution by CCBPI on the preferred shares of stock held by KO shall be subject to the fifteen percent (15%) final withholding tax under Section 28 (B) (5) (b) of the Tax Code."

In view of the foregoing and the fact that the United States of America, where Ford US is registered, allows a credit against the tax due from the non-resident corporation taxes deemed to have been paid in the Philippines, as clearly provided in the US Tax Code, this Office hereby confirms your opinion that the dividends which shall be received by Ford US from the dividends declared by AAP on December 17, 2014 which shall be paid on December 19, 2014 is subject to the fifteen percent (15%) final withholding tax as prescribed under Section 28 (B) (5) (b) of the NIRC 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

K-1-LMAT

036734