REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 32(B)(7)(a), NIRC
BIR Ruling No. 1106-2018
OT- 0415-2020

JUL 24 2020

CASTILLO LAMAN TAN PANTALEON & SAN JOSE
2nd -5th Floors, The Valero Tower
122 Valero St., Salcedo Village, Makati City

Attention: **<u>Louie Alfred G. Pantoni</u>**

Gentlemen:

This refers to your request for confirmation that the interest income of Infraco Asia Luzon Hydro Pte. Ltd. ("InfraCo Hydro") from its loan transaction with Alternergy Mini Hydro Corporation ("Alternergy") as described below, as well as InfraCo Hydro's income from investments in other loans, stocks, bonds or other domestics securities, and deposits in Philippine banks, is exempt from Philippine income tax and withholding thereof pursuant to Section 32(B)(7)(a) of the 1997 Tax Code, as amended.

Background:

InfraCo Hydro is a nonresident foreign company organized and existing under the laws of Singapore, with Company Registration No. [redacted], having its registered office and principal place of business at 10 Collyer Quay, #10-01 Ocean Financial Centre, Singapore 049315 and Level 18 Republic Plaza II, 9 Raffles Place, Singapore 048619, respectively. It is registered as a non-taxable taxpayer with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) [redacted]. As a company engaged in development infrastructure projects, InfraCo Hydro provides financing for the development of mini hydropower plants in various areas in Luzon. InfraCo Hydro is not registered as a corporation or partnership in the Philippines as certified by the Securities and Exchange Commission (SEC) on August 2, 2016. It is a wholly-owned subsidiary of InfraCo Asia Development Pte. Ltd. ("InfraCo Asia").

InfraCo Asia is a nonresident foreign company organized and registered under the laws of Singapore, with Company Registration No. [redacted] having its registered office and principal place of business at 10 Collyer Quay, #10-01 Ocean Financial Centre, Singapore 049315 and Level 18 Republic Plaza II, 9 Raffles Place, Singapore 048619, respectively. Its principal purpose and mission is to provide financing for the development of infrastructure opportunities and bring projects to the stage where they can attract domestic and international private sector debt and equity finance, focusing on the poorer regions of South and Southeast Asia.

InfraCo Asia is wholly-owned by the Private Infrastructure Development Group ("PIDG"), a multi-donor arrangement aimed at facilitating the provision of infrastructure needed to eliminate poverty in developing countries by encouraging private investment. PIDG is directed and funded by its participating donors, consisting of (i) the World Bank Group, as represented by the International Finance Corporation ("IFC"), and (ii) foreign governments, namely, the United Kingdom, Switzerland, Netherlands, Germany, Sweden, Australia, and Norway,[1] IFC is an international organization established by the Articles of Agreement among its member countries including the Republic of the Philippines. The ownership, funding and operation of InfraCo Asia are governed by the Amended and Restated Agreement between InfraCo Asia Development Pte. Ltd and its Funders and Shareholders in relation to the Funding and Operation of Infraco Asia Development Pte. Ltd. dated July 22, 2015, as amended.

PIDG owns [redacted] ordinary shares of InfraCo Asia, constituting 100% of the latter's issued shares, through the trustees – SG Hambros Trut Company Ltd., Multiconsult Trustees Ltd., and Minimax Ltd. At present, the operations of InfraCo Asia are entirely funded by the governments of the United Kingdom (through its Department for International Development), Switzerland (through the Swiss State Federal Department of Economic Affairs, Education and Research), and Australia (through its Department of Foreign Affairs and Trade) pursuant to the Amended and Restated Funders' Agreement dated July 22, 2015, as amended. In view of its ownership structure, InfraCo Asia is a financing institution ultimately owned, controlled, and financed by foreign governments.

Alternergy is a domestic corporation with principal office address at Level 6, Twin Cities Building, 110 Legazpi Street, Legaspi Village, Makati City, Philippines, with TIN [redacted]. It is primarily engaged in the business of developing renewable energy.

On April 28, 2016, InfraCo Hydro, as lender, entered into a Convertible Loan Agreement (''CLA'') with Alternergy, as Borrower, and Altenergy Hydro Partners Corporation, as Covenantor. Under the CLA, InfraCo Hydro agreed to make an investment in Alternergy in the form of convertible loans in the aggregate principal amount of up to US$[redacted], subject to the terms and conditions set forth in the CLA.

Based on the foregoing, you request confirmation on the following:

1. That the interest income to be received by InfraCo Hydro from Alternergy pursuant to the CLA is exempt from the 20% final withholding tax pursuant to Section 32(B)(7)(a) of the 1997 Tax Code, as amended; and

2. That any income derived by InfraCo Hydro from investments in the Philippines in other loans, stocks, bonds or other domestics securities, or from interest on deposit in banks in the Philippines is exempt from income tax and the withholding thereof pursuant to Section 32(B)(7)(a) of the Tax Code, as amended.

In reply, please be informed that since InfraCo Asia is a financing institution entirely and ultimately owned, controlled, or financed by foreign governments, its income from investments in loans, stocks, bonds or other domestic securities, or from interest on deposit in banks in the Philippines is exempt from income tax and the withholding thereof pursuant to section 32(B)(7)(a) of the Tax Code, which states:

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[1] Excluding Austria and Ireland which cancelled their membership from PIDG on July 16, 2014 and March 26, 2015, respectively.

OT - 0415 - 2020
JUL 24 2020

"SEC.32. Gross Income.-

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(B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(7) Miscellaneous Items.-

(a) Income Derived by Foreign Government.- Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."

In view of the foregoing, InfraCo Hydro's interest income from Alternergy is exempt from income tax and consequently from withholding tax because InfraCo Hydro is wholly-owned by InfraCo Asia, which is a financing institution entirely and ultimately owned, controlled and financed by foreign governments, particularly the governments of the United Kingdom (through its Department for International Development), Switzerland (through the Swiss State Federal Department of Economic Affairs, Education and Research), and Australia (through its Department of Foreign Affairs and Trade). As such, Alternergy is not required to withhold any income tax on interest income earned by or due to InfraCo Hydro pursuant to the CLA. Similarly, InfraCo Hydro's income investments in loans, stock, bonds or other domestic securities, or from interest on deposits in loans, stocks, bonds, or other domestic securities, or from interest on deposits in banks in the Philippines are also exempt from income tax and, consequently, from the withholding tax. *(BIR Ruling No. 1106-18* dated July 24, 2018)

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

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