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
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CE CASECNAN WATER AND ENERGY COMPANY, INC.
24TH Floor, 6750 Ayala Avenue,
Makati City 1226

Attention : **Mr. Joseph L. Sullivan**
President

Gentlemen:

This refers to your letter dated June 18, 2014, requesting for confirmation of your opinion that dividend remittances of **CE Casecnan Water and Energy Company, Inc. (CE Casecnan)** 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 Casecnan**, with Tax Identification No. is a corporation organized and existing under the laws of the Philippines, with principal place of business at the Municipality of Pantabangan, Province of Nueva Ecija, and with business address at 24th floor, 6750 Ayala Avenue, Makati City; that **CE Casecnan** was incorporated in September 1994 to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydroelectric power generation project and related facilities for the conversion into electricity of water provided by and under contract with the National Irrigation Administration (NIA) with a rated capacity of 150 megawatts and for the supply of water for agricultural purposes to NIA located in the provinces of Nueva Ecija and Nueva Vizcaya; that on the other hand, **CEL**, 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 exempted 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 **CEL** is not registered with the Securities and Exchange Commission (SEC) as a foreign corporation engaged in trade or business in the Philippines as evidenced by a Certificate of Non-Registration issued by the latter on January 16, 2014; that **CEL** owns 15% of the total issued and outstanding shares of stock of **CE Casecnan**; and that per Secretary's

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Certificate dated June 18, 2014, cash dividends in the amount of US$ [redacted] were declared during the June 13, 2014 meeting of the Board of Directors of the Corporation, to be paid out on or before June 30, 2014, as follows:

1) [redacted] to CE Casecnan II, Inc.

2) [redacted] to LaPrairie Group Contractors (International) Ltd., and

3) [redacted] to CE Casecnan Ltd.

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. —

xxx xxx xxx

(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

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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 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. *(BIR Ruling No. 629-12 dated November 22, 2012)*

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)*

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SUCH BEING THE CASE, this Office holds that cash dividends declared on June 13, 2014, to be paid by **CE Casecnan** to **CEL**, a non-resident foreign corporation domiciled in Bermuda, on or before June 30, 2014, 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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