REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 28(B)(5)(b)
BIR Ruling No. 378-13; BIR Ruling No. 374-13; BIR Ruling No. 304-11
OT-0325-2020
JUN 15 2020

R.G. MANABAT & CO.
The KPMG Center, 9/F
6787 Ayala Avenue,
Makati City 1226

Attention : **Atty. Maria Georgina J. Soberano**
Principal, Tax

Gentlemen:

This refers to your letter dated September 26, 2014, requesting on behalf of **LAPRAIRIE GROUP CONTRACTORS INTERNATIONAL LTD. (LGCI)**, for confirmation that cash dividends received by **LGCI** from **CE CASECNAN WATER AND ENERGY COMPANY, INC. (CECWEC)** are subject to the fifteen percent (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".

It is represented that **LGCI** is a non-resident foreign corporation organized and existing under the laws of Barbados with registered business address at 2nd Floor, Building 2, Chelston Park, Collymore Rock, St. Michael, Barbados; that **LGCI** 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 April 30, 2014; that **LGCI** holds a total of [redacted] common shares, with par value of Php [redacted] each or a total Php [redacted] in CECWEC, a domestic corporation with business address at 24th Floor, 6750 Building, Ayala Avenue, Makati City, Philippines; that **LGCI** has an equivalent to fifteen percent (15%) shareholding in CECWEC; that in a special meeting of the Board of Directors of CECWEC held on September 11, 2014 the Board resolved that of the cash dividends in the amount of USD [redacted] to be distributed, the equivalent of 15% thereof or USD [redacted] will be distributed and paid to **LGCI** on or before September 30, 2014; and that the Department of Inland Revenue of the Government of Barbados has issued a certification confirming that the dividends received by **LGCI** from the non-resident Philippine Company will not be included in the assessable income of the Company.

Based on the foregoing representations, you now request confirmation that cash dividends to be received by **LGCI** from **CE CASECNAN** are subject to the fifteen percent (15%) preferential withholding tax rate prescribed in Section 28(B)(5)(b) of the Tax Code of 1997, as amended.

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 Corporation. –*
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> 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 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."*
>
> *xxx xxx xxx*

In stressing the rationale of the above provisions, the Supreme Court in the case of *Commissioner of Internal Revenue v. Wander Philippines, Inc. (G.R. No. L-68375 dated April 15, 1998)*, 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 fifteen percent (15%) is hereby affirmed.*"

Thus in *BIR Ruling No. 304-11 dated August 15, 2011*, this Office ruled that:

> "*In this case, the Department of Inland Revenue of the Government of Barbados has issued a Certification that* **LGCI** *will not be subject to tax on dividends from its non-resident affiliate in accordance with the provisions of the Income Tax Act Cap 73 Section 9 (1) (1) (iii), which stresses that:*
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> "*Calculation of Assessable Income:*
> *Amounts Not Included*
>
> *9. (1) In calculating the assessable income of a person for an income year, the following amounts shall not be included namely;*
>
> *(a) xxx*
>
> ...
>
> *(l) (i) x x x*
> *(ii) x x x*
> *(iii) in respect of income year 2007 and subsequent income years, amounts received by a resident company registered in Barbados as dividends, other than preference dividends from a non-resident company when the Barbados resident is a shareholder representing at least ten percent (10%) if the capital of the non-resident company and such shareholding is not held solely for the purpose of portfolio investments.*"

Hence, considering that **LGCI** holds more than ten percent (10%) of the capital of the non-resident company, the dividends received by it, as a company registered in Barbados, shall not be included in calculating the assessable income under the Income Tax Act of Barbados.

Based on the foregoing and in view that **LGCI** has been certified by the Barbadian Department of Inland Revenue that it will not be subject to tax on the cash dividends received from its non-resident affiliate in accordance with the provisions of the Income Tax Act Cap 73 Section 9 (1)(1)(iii), this Office hereby confirms your opinion that cash dividends in the amount of USD declared by CECWEC on September 11, 2014

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to be received by **LGCI** on or before September 30, 2014 are subject to fifteen percent (15%) final withholding tax imposed under Section 28 (B)(5)(b) of the Tax Code of 1997, as amended. (*BIR Ruling No. 378-13 dated October 11, 2013; BIR Ruling No. 374-13 dated October 10, 2013; and BIR Ruling No. 304-11 dated August 15, 2011)*

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
034310

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