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. 069-2013
OT- 0490-2020
SEP 08 2020

ISLA LIPANA & CO.
29th Floor, Philamlife Tower,
8767 Paseo de Roxas,
1226 Makati City

Attention: <u>ATTY. SYLVIA B. SALVADOR</u>
Director

Gentlemen:

This refers to your letter dated May 12, 2014, requesting on behalf of your client, **Arisaig Global Emerging Markets Consumer Fund (Singapore) Pte. Ltd. ("Arisaig" for brevity)**, for confirmation that the dividends received by Arisaig from its investments in Jollibee Foods Corporation ("Jollibee" for brevity) are subject to the fifteen percent (15%) tax rate pursuant to Section 28 (B)(5)(b) of the National Internal Revenue Code of 1997, as amended.

<u>Background:</u>

Jollibee is a domestic corporation duly organized and existing under the Philippine laws and with office address at 10th Floor, Jollibee Plaza Building, No. 10 Emerald Avenue, Ortigas Centre, Pasig City. It is registered with the Securities and Exchange Commission (SEC) under Registration No. [redacted] to engage in and carry on restaurant business.

On the other hand, Arisaig is a private company limited duly organized and existing under the laws of Singapore with address at 7A Lorong Telok, Singapore 049020. It has no fixed place of business in the Philippines and is not registered as a corporation or as a partnership in the Philippines, as confirmed by the SEC in its Certification dated April 23, 2014.

Arisaig has shareholdings in the Philippines from which it receives dividends from its investments. It holds [redacted] shares of Jollibee as of May 08, 2014.

On July 31, 2012, Arisaig applied for a tax exemption scheme for Resident Funds pursuant to Section 13(R) of the Singapore Income Tax Act ("SITA"). On August 27, 2012, Arisaig was issued a Letter of Approval by the Monetary Authority of Singapore approving the tax exemption scheme for the period commencing from July 31, 2012.

On April 07, 2014, the Board of Directors of Jollibee approved the declaration of a cash dividend in the amount of [redacted] (P[redacted]) per share from its unrestricted retained earnings as of 2008-2009, to all stockholders of record as of May 08, 2014 and payable on May 30, 2014.

In view thereof, Arisaig would like to confirm whether or not the dividends to be received from Jollibee are subject to the fifteen percent (15%) tax rate pursuant to Section 28 (B)(5)(b) of the National Internal Revenue Code of 1997, as amended.

In reply, please be informed that Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997, as amended, provides as follows:

> *"SEC. 28. Rates of Income Tax on Foreign Corporations. —*
>
> *xxx xxx xxx*
>
> *(B) Tax on Nonresident Foreign Corporation. —*
>
> *xx xxx xxx*
>
> *(5) Tax on 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 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)

Under the afore-quoted provision, the dividends to be paid by Jollibee to Arisaig are subject to fifteen percent (15%) Philippine income tax if Arisaig's country of domicile, Singapore, shall allow Arisaig a fifteen percent (15%) deemed paid tax credit against its income tax due on such dividends in Singapore. It is noted that Section 13 (8) of Singapore Income Tax Act ("SITA") provides as follows:

> *"(8) Where the conditions specified in subsection (9) are satisfied, there shall be exempt from tax —*
>
> *(a)* ***Any dividend derived from any territory outside Singapore;***
>
> *(b) Any profit derived from any trade or business carried on by a branch in any territory outside Singapore of a company resident in Singapore; and*
>
> *(c) Any income derived from any professional, consultancy and other services rendered in any territory outside Singapore only if the Comptroller is satisfied that the income is derived, for the purposes of this Act, from outside Singapore,*

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and received in Singapore —

(i) On or after 1st of June 2003 by any person, not being an individual resident in Singapore;

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(9) The conditions referred to in subsection (8) are —

(a) the income is subject to tax of a similar character to income tax (by whatever name called) under the law of the territory from which the income is received;

(b) at the time the income is received in Singapore by the person resident in Singapore, the highest rate of tax of a similar character to income tax (by whatever name called) levied under the law of the territory from which the income is received on any gains or profits from any trade or business carried on by any company in that territory at that time is not less than 15%; and

(c) the Comptroller is satisfied that the tax exemption would be beneficial to the person resident in Singapore" (Emphasis and underscoring supplied)

Applying the above-cited provisions, in relation to Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997, as amended, it is clear that the cash dividends declared by Jollibee's Board of Directors on April 07, 2014 will not be taxable in Singapore on the part of Arisaig.

It is worthy to mention that the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc.*[1], has ruled that exemption from taxes by the country of domicile of the non-resident corporate stockholder on dividends received, is sufficient basis for the applicability of the fifteen percent (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."*

The above ruling was reiterated in the case of *Caltex (Philippines), Inc. vs. Commissioner of Internal Revenue*[2], wherein it was held that the dividends remitted by a domestic corporation to a resident of Bermuda is subject to fifteen percent (15%) withholding tax in as much as Bermuda does not impose any tax on dividends received by corporations domiciled therein, pursuant to the Exempted Undertaking Tax Protection Act of 1966.

In view of the foregoing, this Office hereby confirms your opinion that dividends declared by Jollibee on April 07, 2014 shall be subject to the preferential withholding

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[1] 160 SCRA 573 [1988]
[2] CTA Case No. 4986 dated October 6, 1995

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tax rate of fifteen percent (15%) on the part of Arisaig pursuant to Section 28 (B) (5) (b) of the National Internal Revenue Code of 1997, as amended, considering that under the SITA, dividends derived by Arisaig from sources outside Singapore, are exempt from Singapore income tax. ***(BIR Ruling No. 069-2013 dated February 18, 20113)***

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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