27th. April, 2018.

Mr. Alain Moreau
Rua Jacarezinho, 147
Jardim Paulistano
São Paulo – SP

Dear Alain,

1. I refer to your consultation on behalf of Associação das Comunidades Indígenas da Reserva Kadiwéu - ACIRK with regard to the income tax implications arising from the transfer of 10 drawings to Fondation Cartier & Cie. (hereafter, "**Fondation Cartier**") for an exhibition named Geométries Américanes, du Mexique à la Terre du Feu", scheduled to take place in Paris from 10th. July, 2018, to 6th. January, 2019.

The drawings in reference are duly identified by their respective numbers printed on the back of each drawing and were performed by the following artists:

Desenho	115	-	Ester Marcolino
Desenho	150	-	Olinda Vergílio Pires
Desenho	164	-	Inácia Bernardino
Desenho	194	-	Maria de Fátima Matchua
Desenho	211	-	Ana Lúcia Soares
Desenho	251	-	Rosa Francisco
Desenho	312	-	Teodócia Rocha
Desenho	315	-	Timotéia Moraes
Desenho	345	-	Regina da Silva

Desenho 414 - Cleuza Alcântara

2. In this connection, I have reviewed the 10 bilingual Feiulles de Prêt/Loan Form prepared by Fondation Cartier and its attached Conditions Générales de Prêt/General Loan Terms and Condition, already previously reviewed, filled in and signed by you, with one counterpart having been returned by e-mail to Fondation Cartier.

3. The arising tax implications for ACIRK, as mentioned under **Paragraph 1,** are relevant, particularly in light of Ms. Marie Perennes' remarks in her e-mail dated 3rd. April, 2018, addressed to you, on the exposure of the agreed payment for the amount of 250 € for each drawing, thus for the aggregate amount of 2.500 €, to withholding tax at a 33% rate to be deducted at source from the gross amount, claimed to be provided by the Paraguay (or rather, Brazil) – France Tax Convention.

4. The 33% withholding tax rate mentioned under **Paragraph 3** is widely used in Brazil in the case of payments made by a Brazilian resident payor to a non-resident payee, whenever the payee chooses to be paid a gross amount instead of a net amount after deduction of the withholding tax at the ordinary rate (called a "gross up").

The 33% withholding tax rate, given its special characteristic, as compared to the ordinary rate, is usuallly named "practical tax rate".

In the case covered by the consultation, it is obvious that this would be applicable the other way round, namely, the Fondation is the non-resident payor and tax paying source, while ACIRK is the resident payee.

Upon reviewing the Brazil – France Convention for Preventing Double Taxation and Avoiding Tax Evasion regarding tax on earnings in general, approved by Decree nº. 70.506, of 12th. May, 1972, the only reference I have found to earnings of the type legally treated as rent is made by Article VI, yet only to rent due under Lease Agreements of real estate property, which is not our case of course.

However, even in the situation covered by **Article VI**, nothing is provided by the Double Taxation Convention in respect of the use of the practical tax rate, which does not preclude it from being used, as agreed by the payor and the payee in general,

Accordingly, as a rule, the practical tax rate could be legally applied as claimed by the Fondation, except that, in our specific instance, ACIRK will not be exposed to any such special withholding tax rate, nor to any other ordinary withholding tax rate, as explained below under **Paragraph 5**.

5. As provided by Article 1 of its Statute, dated 3rd. April, 2016, ACIRK is a non-profit civil association, which, as such, among other entities specifically listed under Article 174 of the Income Tax Regulations (Decree nº. 3.000, of 30th. March, 1999), hereafter the "**Regulations**".

ACIRK therefore enjoys full Corporate Income Tax exemption, subject to compliance with a number of requirements provided by Article 170, Paragraphs 2 and 3, (i) to (v), of the Regulations, as transcribed below:

Article 174. Non-profit charity, recreational, cultural and scientific institutions, and civil associations which render the services they have been set up for and make them available to the persons they are intended for are tax free.

Paragraph 1. The above mentioned exemption is limited to Corporate Income Tax, subject to compliance with the following Paragraph.

Paragraph 2. Earnings from capital gains earned from fixed or variable income financial investments are not comprised by the tax exemption.

Paragraph 3. The provisions of **Paragraphs 2** and 3, **(i)** to **(v)**, of **Article 170** will apply.

Article 170. Non-profit educational and social assistance institutions are not subject to (corporate) income tax.

Paragraph 2. An entity will be deemed to be non-profit whenever it does not show a surplus in its accounts or, on the event it does in any given fiscal year, it directs the full amount of its result to the maintenance and development of its corporate objectives.

Paragraph 3. For the sike of enjoyment of the exemption, the institutions mentioned under this **Article 170** are required to comply with the following requirements:

(i) Not to remunerate its officers in any manner for their services rendered;

(ii) To invest the full amount of its (financial) resources in the maintenance and development of its corporate objects;

(iii) To keep complete accounting records of its income and expenses in books in accordance with the applicable formalities which assure their respective accuracy;

For answering the question concerning a possible adverse tax impact out of the exemption scope, as it is taken for granted that the relative amount will be treated as income for ACIRK, and will as such be included in to the Corporate Income Tax calculation base (taxable net profit after certain tax adjustments), if and when tax were due, I have researched the tax authorities' views on this matter.

According to a ruling of the 7th. Tax Region Superintendency (ruling nº. 191/97), any entity benefitted by the tax exemption discussed is not prevented from earning income treated as rent, in our case, arising from the lease of unoccupied space not required for performance of its activities. The rule should be understood as applicable to any rent earned by the tax exempted entity, irrespective of its source.

This ultimately means that the tax exemption fully enjoyed by ACIRK will not be affected by receipt of rent paid by Fondation Cartier.

8. I trust having duly answered your consultation,

Notwithstanding the foregoing, do not hesitate to ask for any further information or clarification as required.

Best regards,

Eduardo Y. Henry