REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Section 28(A)(5) of the Tax Code of 1997, as amended; RR No. 2-98
BIR Ruling No. 1395-18
OT- 007-2023
FEB 15 2023

TOYO CONSTRUCTION CO., LTD.
PHILIPPINE BRANCH (TOYO PHIL)
3rd Floor, Planters Products Inc. Building
109 Esteban Street, Legaspi Village
Makati City

Attention: **Mr. Hiroki Nakazawa**
General Manager

Gentlemen:

This refers to your letter dated April 11, 2019 requesting for confirmation that your purchase of foreign exchange for remittance to your head office, Toyo Construction Co., Ltd. (TOYO JAPAN), as reimbursements for advanced operating funds are not subject to branch profit remittance tax (BPRT) considering that the same are mere liquidation or return of temporary operating funds for the Japanese International Cooperation Agency (JICA) and Official Development Assistance (ODA) Project.

Background

Toyo Construction Co., Ltd. – Philippine Branch (Toyo Phil) is a Japanese construction firm registered with the Securities and Exchange Commission (SEC) as a branch office of Toyo Construction Co., Ltd. (Toyo Japan) which is a foreign company incorporated in Tokyo, Japan. The branch office, Toyo Phil, is authorized to do business in the Philippines either as a sole contractor or in joint venture/consortium, for the construction of government infrastructure projects. These projects are procured through competitive international bidding by the Japanese Official Development Assistance (ODA), with financing done through foreign loan or Grant-Aid extended by the facilities of Japan International Cooperation Agency (JICA) and other international private funders.

Among other construction projects, Toyo Phil has been awarded the Civil Works and Consulting Services for the construction contract entitled "Contract Package No. 2 – Lower Marikina River of the Pasig-Marikina River Channel Improvement Project, Phase III". The total contract amount is P funded by ODA Loan extended by the Government of Japan

OT- 007-2023
FEB 15 2023

through the JICA to the Government of the Philippines with the Department of Public Works & Highways (DPWH) as the Philippine Government executing agency.

Based on the contract between DPWH and Toyo Phil, of the total contract amount thereon, Yen Portion shall be paid and collected in Japan, while the remaining Peso Portion representing payment for value-added tax (VAT) and Government of the Philippines counterpart will be collected in the Philippines. Necessarily, almost all of the operating funds for the execution of the Philippine project have been initially advanced and provided for by the head office or Toyo Japan. Thus, Toyo Phil received Operating Funds in Yen from Toyo Japan and converted into Peso in order to pay for labor, local materials and other operating costs and expenses needed in the implementation of the project. These are in the nature of temporary fund of Toyo Japan in order to finance the pending projects of Toyo Phil.

Apparently, upon periodic billings, the release of the Peso Portion of the contract have been delayed on account of budgeting problems of the Philippine implementing government agency (DPWH). Invariably, Toyo Phil gets payment of the Peso Portion at the end of every project and these results to the unusual accumulation of a large amount of peso deposits at its Philippine bank accounts. Toyo Phil now intends to convert some of these peso deposits to Yen and make reimbursements back to Japan to liquidate some of the operating funds extended to it by Toyo Japan.

In this connection, Toyo Phil has applied with the Bangko Sentral ng Pilipinas (BSP) for the exemption on the registration of the outward remittance of operating funds to Toyo Japan and to allow Toyo Phil to purchase foreign exchange currency from authorized agent banks. In so doing, Toyo Phil has represented that these remittances do not fall under BSP regulations per its Appendix 1 "Minimum Documentation Requirements for the Sale of Foreign Exchange (FX) for Non-Trade Purposes by Authorized Agent Banks (AABs)/AAB – Forex Corps" since the intended remittances are not share in head office expenses (including reimbursements); capital repatriation of foreign direct equity investments; and remittance of dividends/profits/earnings/interests.

In a letter dated February 19, 2019, the BSP approved the above request citing Monetary Board Resolution No. 244 dated February 14, 2019, the relevant portion of which is, as follows:

> "1. The approval of the request of Toyo Phil to purchase foreign exchange (FX) up to the aggregate amount of Japanese Yen JPY) and JPY equivalent of US$ for remittance to its Head Office, Toyo Construction Co., Ltd. Japan (Toyo Japan), representing return of the funds sent by Toyo Japan for the projects entered into by Toyo Phils with the Department of Public Works and Highways (DPWH), subject to the presentation to the FX selling institution of the following: (a) Bangko Sentral ng Pilipinas (BSP)-letter approval; (b) summary of FX purchases (form attached); and (c) copy of the pertinent disbursement vouchers and official receipts covering collections made by Toyo Phils from DPWH; and xxxxx"

In support of the herein request, the following documents are submitted:

OT- 007-2023
FEB 15 2023

1. Copy of the Contract Agreement for The Construction of Contract Package No. 2, Lower Marikina River (Napindan Channel to Downstream of Manggahan Floodway) Under the Pasig-Marikina River Channel Improvement Project (Phase III), JICA Loan No.

2. Copies of two (2) Certifications both dated January 14, 2019 issued by RCBC Savings Bank as to the inward remittances from Toyo Japan in favor of Toyo Phil; and

3. Letter issued by BSP dated February 19, 2019 approving the FX purchases of Toyo Phil representing the return of the funds sent by Toyo Japan.

In reply, please informed that Section 28(A)(5) of the Tax Code of 1997, as amended, provides as follows:

> "(5) **Tax on Branch Profit Remittances.** — Any profit remitted by a branch to its head office shall be subject to a tax of fifteen percent (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57 and 58 of this Code: Provided, That interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines."

A careful scrutiny of the above-cited section disclosed that any profit remitted by a branch to its head office is subject to the BPRT at the rate of 15%. The term "income" means all wealth which flows into the taxpayer other than as a mere return of capital. *(Sec. 36, Income Tax Regulations)* Thus, the amounts to be remitted by Toyo Phil (branch) to Toyo Japan (head office), consisting of the amounts previously advanced by the head office as operating funds to pay for labor, local materials and other operating costs and expenses needed in the implementation of the project, are not profits but capital contributions of the head office and therefore not subject to the BPRT prescribed in Section 28(A)(5), supra. These are in the nature of temporary fund of Toyo Japan in order to finance the pending project of Toyo Phil.

As a rule, the 15% BPRT is imposed on profits remitted abroad by a branch to its head office. The tax base upon which the 15% BPRT is imposed is the profit actually remitted abroad. *(Commissioner of Internal Revenue vs. Burroughs Limited, G.R. No. 66653. June 19, 1986, 142 SCRA 324.)*

Mere reimbursements of actual expenses/costs without any mark-up or profit element do not constitute income payments and are, therefore, not subject to Philippine income taxes. Since the Yen advances by Toyo Japan as operating funds to pay for labor, local materials and other operating costs and expenses are needed in the implementation of the project, it is clear that liquidation of the said advances would not constitute profits taxable under the above provisions of

OT- 007-2023
FEB 15 2023

tax laws. The advances made by your Toyo Japan are in the nature of temporary capital contributions and therefore are not subject to income tax and withholding tax and consequently to BPRT.

In view thereof, this Office hereby confirms your opinion that the foreign exchange remittance by Toyo Phil to Toyo Japan as reimbursements for advanced operating funds, to the extent and in the amount that can be accounted for and substantiated by appropriate documents as such, is not subject to the BPRT prescribed in Section 28(A)(5) of the Tax Code of 1997, as amended.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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