February 17, 2021

BIR RULING NO. OT-024-21

Revenue Regulations No. 2-98, as amended;
BIR Ruling No. 006-03

Mines and Geosciences Bureau
MIMAROPA Region
7/F DENR Building, 1515
Roxas Boulevard, Ermita, Manila

Attention: *Roland A. De Jesus, CESO V*
Regional Director

Gentlemen :

This refers to your letter dated September 17, 2020 requesting on behalf of Department of Environment and Natural Resources-Mines and Geosciences Bureau (DENR-MGB) for clarification on whether the imposable withholding tax for the procurement of service of the consultant on the feasibility study, planning and structural design is 10-15% based on Section 2.4.6 of Revenue Regulations (RR) No. 11-2018 or 2% based on Section 2.C.1 of RR No. 11-2018.

Based on your representations, DENR-MGB has pending procurement for consultancy services for the conduct of feasibility study, planning and structural design for the construction of Gabion Dam in Mogpog River in Marinduque; that you will acquire the service of Green Development Solutions, Inc. (GDSI), whose Line of Business under its Certificate of Registration with the Bureau of Internal Revenue (BIR) is Code no. 7421 — Architectural, Engineering Activities, Technical Consultancy; that the said company claims that based on Section 3 (E) of Revenue Regulations (RR) No. 6-2001, they should be classified as General Engineering Contractors, therefore, the imposable withholding tax is 2%. Hence, this request.

In reply, please be informed that Section 2.57.2 (C) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 11-2018, states that:

"(C) Income payments to certain contractors — On gross payments to the

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following contractors, whether individual or corporate — Two percent (2%)."

The above provision categorically enumerated the types of contractor to which withholding tax of 2% is imposable, including therein both General Engineering Contractors and Specialty Contractors.

In BIR Ruling No. 006-03 dated August 15, 2003, this office ruled that for purpose of withholding tax, an independent firm of quantity surveyors, cost engineers and construction cost specialists, is considered a specialty contractor. In the said ruling, the company renders quantity surveying services in building and other civil works projects including, but not limited to, initial design, tendering procedures and contract arrangements, cost studies and planning, Master development programming, tender contract analysis and report, construction progress financial statement preparation, advisory contract administration, valuation of construction work in progress and cost and material supervision in each and every work phase of construction, which services pertain to the performance of construction work requiring special skill. Notwithstanding the fact that the company does not perform actual construction work, it was considered a specialty contractor, because its principal contracting business involves the use of specialized building trades or crafts.

Accordingly, said ruling states that as a specialty contractor, the professional fees that the company receives for quantity surveying services are subject to creditable withholding tax at the rate of 2% in accordance with RR No. 2-98, as amended.

Based on the foregoing, this Office opines that GDSI is considered as specialty contractor since its line of business requires special skills, such as feasibility study, planning and structural design, generally carrying activities in conjunction with and related to any of the services of a specialty contractor. Hence, all income payments received by GDSI as specialty contractor are subject to creditable withholding tax at the rate of 2% pursuant to Sec. 2.57.2 (C) (3) of RR No. 2-98, as amended by RR No. 11-2018.

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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