March 18, 2021

BIR RULING NO. OT-082-21

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

Magsalin, Magsalin & Associates
LKG Tower 37 Flr. 6801 Ayala Avenue
Makati City 1226, Philippines

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 03, 2020 requesting on behalf of your client, 515 Life Construction Corporation ("the Corporation"), for a confirmation of your opinion that the engineering services provided by the Corporation, specifically, Geotechnical Investigation and Soil Testing are subject to two percent (2%) creditable withholding tax pursuant to the National Internal Revenue Code of 1997 (Tax Code), as amended.

Documents submitted show that the Corporation, with Taxpayer Identification Number (TIN) 000-000-000-000 and principal office at Brgy. Buco, Talisay, Batangas is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Registration No. CS201405329 dated March 21, 2014; that the primary purpose for which the corporation was established is to provide services and operate general construction, renovation, fit-out and maintaining facilities, renovations and upgrading facilities to prospective clients for a fee; that the Corporation has entered into several contracts with government agencies and local government units to provide soil testing, laboratory and analysis, preparation and submission of final geotechnical report, highway and bridge detailed engineering design, topographic survey, bridge site survey, sub surface soil exploration works and geotechnical investigation; and that as such, you now request for confirmation that the fees received by the Corporation for services rendered are subject to the 2% creditable withholding tax pursuant to Section 57 (B) of the Tax Code, as amended, in relation to Section 2.57.2 (C) of Revenue Regulations (RR) No. 2-98, as amended.

In reply, please be informed that Section 2.57.2 (C) of RR No. 2-98, as amended by

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RR No. 11-2018, states that:

> *"Section 2.57.2. Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:*
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> xxx xxx xxx
>
> *(C) Income payments to certain contractors — On gross payments to the following contractors, whether individual or corporate — Two percent (2%).*
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> xxx xxx xxx
>
> *(2) General Building contractors — Those whose principal contracting business is in connection with any structure built, for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereto. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds, and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skills, powerhouse, power plants and other utility plants and installation, mines and metallurgical plants, cement and concrete works in connection with the above-mentioned fixed works.*
>
> *(3) Specialty Contractors — Those whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts."*

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 the 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

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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, the 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 515 Life Construction Corporation is considered as specialty contractor since its line of business requires special skills, such as soil testing, laboratory and analysis, preparation and submission of final geotechnical report, highway and bridge detailed engineering design, topographic survey, bridge site survey, sub surface soil exploration works and geotechnical investigation, generally carrying activities in conjunction with and related to any of the services of a specialty contractor. Hence, all income payments received by 515 Life Construction Corporation 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.

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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