REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 22 (B) of the NIRC; RR No. 14-02; RR No. 10-12
BIR Ruling No. 013-2018
JV-171-2022
APR 21 2022

Premium Megastructures, Inc./Dragonhart Construction Enterprise, Inc. - Joint Venture
30 floor IBM Plaza Building, Eastwood
Bagumbayan, Quezon City, 1110

Attention: **Mr. Cecilio E. Dela Cruz**

Gentlemen:

This refers to your letter requesting for a ruling that the joint venture between Premium Megastructure, Inc., and Dragonhart Construction Enterprise, Inc. formed for the purpose of undertaking the Contract for the construction of drainage system/outfall extension at Manila Bay with Project ID No. ("JV Project") is exempt from the two percent (2%) creditable withholding (CWT) tax pursuant to Revenue Regulations (RR) No. 11-2018.

Documents submitted disclosed that Premium Megastructure, Inc., and Dragonhart Construction Enterprise, Inc. - Joint Venture ("JV"), with Taxpayer Identification Number (TIN)) is an unincorporated joint venture formed to undertake the construction of the JV Project; that the JV is also registered with the Philippine Contractors Accreditation Board (PCAB) with Special Contractor's License No. originally issued on December 17, 2020; that on the other hand, Premium Megastructure, Inc. (TIN:) is engaged in general construction; that it is also registered with the PCAB with Contractor's License No. originally issued on September 17, 2012; that Dragonhart Construction Enterprise, Inc. (TIN) is also engaged in general construction; that it is also registered with the PCAB with Contractor's License No. originally issued on December 12, 2004; that the JV entered into a contract with the Government of the Republic of the Philippines through the Department of Public Works and Highways (DPWH) for the construction of drainage system/outfall extension at Manila bay; and that the herein co-venturers have mutually agreed to pool their financial, equipment, and technical resources necessary for the proper execution, implementation, and completion of the abovementioned JV project.

In reply, please be informed that pursuant to Section 22 (B) of the National Internal Revenue Code (Tax Code) of 1997, as amended, the term "corporation" shall include partnerships, no matter how created or organized, joint stock companies, joint accounts (cuentas en participacion), association or insurance companies, but does not include general professional partnerships and joint venture of consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government.

Likewise, Section 2.57.5 of RR No. 2-98, as amended by RR No. 11-2018 dated January 31, 2018, provides that the withholding of CWT shall not apply to income payments made to joint ventures or construction formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal & other energy operations pursuant to an operating or consortium agreement under a service contract with the Government.

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Furthermore, Section 3 of RR No. 10-2012 dated June 1, 2012 provides, to wit:

"SEC. 3. Joint Ventures Not Taxable as Corporations. — A joint venture or consortium formed for the purpose of undertaking construction projects which is not considered as corporation under Section 22 of the NIRC of 1997 as amended, should be:

(1) for the undertaking of a construction project;
(2) should involve joining or pooling of resources by licensed local contractors; that is, licensed as general contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI);
(3) the local contractors are engaged in construction business; and
(4) the Joint Venture itself must likewise be duly licensed as such by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI).

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Absent any one of the aforesaid requirements, the joint venture or consortium formed for the purpose of undertaking construction projects shall be considered as taxable corporations.

In addition, the tax-exempt joint venture or consortium as herein defined shall not include those who are mere suppliers of goods, services or capital to a construction project.

The members to a Joint Venture not taxable as corporation shall each be responsible in reporting and paying appropriate income taxes on their respective share to the joint ventures profit."

Such being the case, Premium Megastructure, Inc., and Dragonhart Construction Enterprise, Inc. - Joint Venture formed for the purpose of undertaking the Contract for the construction of drainage system/outfall extension at Manila bay with Project ID No. with the DPWH is considered as a joint venture not taxable as a corporation for complying with the conditions provided in RR No. 10-2012, i.e., (1) the JV is for the undertaking of construction project; (2) the JV involves joining or pooling of resources by licensed local contractors (licensed as general contractor by the PCAB); (3) the local contractors are engaged in construction business; and (4) the JV itself is duly licensed by PCAB; and therefore not subject to the corporate income tax under Section 27 (A) of the Tax Code of 1997, as amended.

Furthermore, the gross payments to the joint venture on the JV Project are likewise, not subject to the two percent (2%) CWT prescribed under Section 57 (B) of the same Code, as implemented by RR No. 2-98, as amended by RR No. 14-2002. (Section 4 of RR No. 14-2002 dated September 9, 2002)

The herein joint venture, being exempt from corporate income tax, is not required to file quarterly and final adjustment returns but the co-venturers are separately subject to the regular corporate income tax imposed under Section 27 (A) of the Tax Code of 1997, as amended, on their taxable income during each taxable year respectively derived by them from the aforesaid construction project. (BIR Ruling No. 13-2018 dated January 10, 2018).

It should be emphasized that the respective net income of the co-venturers derived from the joint venture project is subject to the CWT imposed under Section 57 of the Tax Code of 1997,

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as amended, and implemented by RR No. 2-98, as amended. Thus, before Premium Megastructure, Inc., and Dragonhart Construction Enterprise, Inc. - Joint Venture distributes the net income of the co-venturers, pursuant to their agreed profits/income sharing, it shall withhold the tax based on the net income of its co-venturers. (BIR Ruling No. 13-2018 dated January 10, 2018)

Finally, the co-venturers are required to enroll themselves to the Bureau of Internal Revenue's Electronic Filing and Payment System (EFPS). The enrollment should be done at the Revenue District Office (RDO) where they are registered as taxpayers. (Section 4 of RR No. 10-2012)

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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By:

MARISSA O. CABREROS
Deputy Commissioner
Legal Group
Officer-in-Charge

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