REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 22(B) NIRC; RR 14-02; RR 10-12
BIR Ruling No. 176-14; BIR Ruling No. 475-14
#037-2016
1-15-2016

EQUI-PARCO CONSTRUCTION COMPANY-HEBEI ROAD & BRIDGE GROUP CO., LTD. (JV)
Purok 3, Ambangan, Ambago
Butuan City 8600

Attention: **Mr. Ronnievic C. Lagnada**
Authorized Managing Officer

Gentlemen:

This refers to your letter dated May 29, 2015 requesting for a ruling that the joint venture between Equi-Parco Construction Company ("Equi-Parco") and Hebei Road & Bridge Group Co., Ltd. ("Hebei Group") for the purpose of pre-qualifying and undertaking the construction of *Hybrid Long Term Performance Based Maintenance Contract, PBM-4 Surigao-Davao Road, Surigao (Lipata)-Agusan Del Norte Boundary, under the Road Upgrading and Preservation Project (RUPP), Asset Preservation Contract-Preventive Maintenance (APC-PM) Component, funded under JICA Loan Agreement No. PH-P247, located in the Provinces of Surigao del Norte and Agusan del Norte,* ("JV Project") is exempt from income tax and consequently, not subject to the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) Nos. 014-02 and 10-12.

Documents submitted disclosed that Equi-Parco Construction Company-Hebei Road & Bridge Group Co., Ltd. ("JV"), with TIN , is an unincorporated joint venture formed to undertake the pre-qualification and construction of the JV Project; that the JV is also registered with the Philippine Contractors Accreditation Board (PCAB) with Special Contractor's License No. first issued on June 18, 2015; that on the other hand, Equi-Parco is registered with the BIR with TIN and is engaged in the business of building of constructions or parts and civil engineering; that it is also registered with the PCAB with Contractor's License No. first issued on September 27, 1991; that Hebei Group is likewise registered with the BIR with TIN and is engaged in the business of construction; that it is also registered with the PCAB with Special Contractor's License No. first issued on

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June 18, 2015; that the JV entered into a contract with the Department of Public Works and Highways (DPWH) for the construction and completion of the afore-mentioned JV Project; and that the herein co-venturers have mutually bind each other to contribute to the joint venture, on an Equi-Parco (60%) and Hebei Group (40%) basis, all the necessary capital, equipment, technical personnel, management supervision, and other efforts and resources for the proper implementation of the project and to extend to each other their respective fullest cooperation and best efforts towards profitable construction of the project in accordance with approved plans and specifications to complete the same within the approved contract work schedule.

In reply, please be informed that pursuant to Section 22 (B) of the 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 or 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 4(B)(5) of Revenue Regulations (RR) No. 14-2002 dated September 9, 2002 provides that the withholding of creditable withholding tax (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.

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

> "SECTION 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; and
> (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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Joint ventures involving foreign contractors may also be treated as a non-taxable corporation only if the member foreign contractor is covered by a special license as contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI); and the construction project is certified by the appropriate Tendering Agency (government office) that the project is a foreign financed/internationally-funded project and that international bidding is allowed under the Bilateral Agreement entered into by and between the Philippine Government and the foreign/international financing institution pursuant to the implementing rules and regulations of Republic Act No. 4566 otherwise known as Contractor's License Law.

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, Equi-Parco Construction Company-Hebei Road & Bridge Group Co., Ltd. Joint Venture formed for the purpose of construction of the Hybrid Long Term Performance Based Maintenance Contract, PBM-4 Surigao-Davao Road, Surigao (Lipata)-Agusan Del Norte Boundary, K1113+500 – K1237+000, under the Road Upgrading and Preservation Project (RUPP), Asset Preservation Contract-Preventive Maintenance (APC-PM) Component, funded under JICA Loan Agreement No.
located in the Provinces of Surigao del Norte and Agusan del Norte with the DPWH is considered as a joint venture not taxable as a corporation for complying with the conditions provided in RR 10-2012, *i.e., (1) the JV is for the undertaking of construction project; (2) the JV should involve joining or pooling of resources by licensed local contractors (licensed as general contractor by the (PCAB) or in case of foreign contractor (covered by a special license as contractor by the (PCAB); (3) the local contractors are engaged in construction business; and (4) the JV itself must likewise be 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. (*BIR Ruling No. 176-14 dated June 9, 2014)*

Furthermore, the gross corporate payments to the joint venture are not likewise subject to the 2% creditable withholding tax prescribed under Section 57(B) of the same

Code, as implemented by RR 2-98, as amended by RR No. 14-2002. *(Section 4(B)(5) 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.

However, 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. 475-14 dated November 26, 2014)*.

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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JAN 14 2016

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gps(equi parco-hebei group jv)