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

Sec. 22 (B) 1997 NIRC; RR No. 14-02; RR No. 10-12
BIR Ruling No. 475-14 BIR Ruling No. 176-14
#038-2016
1-15-2016

Kyeryong Construction Industrial Co., Ltd./
R.D. Policarpio & Co., Inc. Joint Venture
544 Melania St., Samsonville Subd., Dau
Mabalacat, Pampanga

Attention : Engr. Noelito D. Policarpio

Gentlemen:

This refers to your letter dated February 23, 2015 requesting for a ruling that the joint venture between Kyeryong Construction Industrial Co., Ltd. (Kyeryong) and R.D. Policarpio & Co., Inc. (R.D. Policarpio) for the purpose of undertaking the Civil Works of the Hybrid Long Term Performance Based Maintenance (LTPBM) Contract for the following projects: 1) PBM-1 Manila North Road, Section 1: Aringay-Santa/Vigan City, K0243+000 to K0389+000 under the Asset Preservation Contract – Preventive Maintenance (APC-PM) Component of JICA Assisted Road Upgrading and Preservation Project (RUPP); and 2) PBM-1 Manila North Road, Section 2: Santa/Vigan City-Laoag City, K0389+000 to K0485+123 also under the APC-PM Component of JICA Assisted RUPP (collectively the Projects) is exempt from the two (2%) percent creditable withholding tax (CWT) pursuant to Revenue Regulations (RR) No. 14-02.

Documents submitted disclosed that Kyeryong Construction Industrial Co., Ltd./R.D. Policarpio & Co., Inc. JV (Kyeryong-R.D. Policarpio JV), with TIN is an unincorporated joint venture formed to undertake the pre-qualification and construction of the afore-stated JV Projects; that it is registered with the Philippine Contractors Accreditation Board (PCAB) under Special Contractor's License Nos. and both first issued on May 19, 2015; that co-venturer Kyeryong is registered with the BIR with TIN and is a Korean company licensed by the Securities and Exchange Commission (SEC) under License No. *to engage in general construction except for locally funded public works and defense related facilities and infrastructure and without engaging in the practice of profession*; that it is also registered with PCAB under Special Contractor's License No. first issued on May 11, 2015; that R.D. Policarpio is likewise registered with the BIR with TIN and is engaged in the business of construction; that it is also registered with PCAB under Contractor's License No. with January 13, 2014 as its registration date (No. and whose validity period is from January 13, 2014 to June 30, 2016; that R.D. Policarpio was first issued its Contractor's License on August 10, 1978 (No. whose principal classification is General Engineering and categorized as an AAA Contractor; that Kyeryong and R.D. Policarpio are both duly licensed Contractors by the Daejeon Metropolitan City and PCAB and they believe that they can maximize their chances to be eligible to bid for the Projects if they will pool their resources; that the herein co-venturers have mutually bind each other to contribute to the joint venture 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 based on the approved work schedule; that the co-venturers agreed that their respective proportionate shares in the profits and losses of the joint venture shall be 60% for Kyeryong and 40% for R.D. Policarpio; and that the Department of Public Works and Highways (DPWH) has issued the corresponding Notices of Award to Kyeryong-R.D. Policarpio JV for the implementation of the above-mentioned Projects funded under JICA Loan Agreement No. PH-247.

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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 RR No. 14-2002 dated September 9, 2002 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.

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; 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).

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 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."

Considering that Kyeryong-R.D. Policarpio JV was formed for the purpose of undertaking the Civil Works of the Hybrid Long Term Performance Based Maintenance Contract of PBM-1 Manila North Road, Section 1: Aringay-Santa/Vigan City, K0243+000 to K0389+000 under the Asset Preservation Contract – Preventive Maintenance Component and of PBM-1 Manila North Road, Section 2: Santa/Vigan City-Laoag City, K0389+000 to K0485+123 also under the APC-PM Component both under the JICA Assisted Road Upgrading and Preservation Project and complies 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 contractor and/or foreign contractor with a special license as contractor by PCAB with the construction project being certified by the appropriate government office as a foreign financed/internationally-funded project; (3) the aforesaid contractors are engaged in construction business; and (4) the JV itself must likewise be duly licensed by PCAB, it is deemed as a joint venture not taxable as a corporation and therefore not subject to the corporate income tax under Section 27(A) of the Tax Code of 1997, as amended.

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Furthermore, the gross corporate payments to the joint venture are not likewise subject to the 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 (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, Kyeryong and R.D. Policarpio 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. 072-10 dated September 15, 2010)

It should be emphasized that the respective net incomes of the co-venturers derived from the joint venture project are subject to CWT imposed under Section 57 of the Tax Code of 1997, as amended, and implemented by RR No. 2-98, as amended. Thus, before Kyeryong-R.D. Policarpio JV 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. 176-14 dated June 9, 2014 and 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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