March 2, 2021

BIR RULING NO. JV-056-21

Sec. 22 (B) of the National Internal Revenue Code of 1997, as amended; RR 2-98, as amended; RR 10-12; BIR Ruling No. 1421-18

First Balfour, Inc.-MRAIL, Inc. Joint Venture
Km 9 West Service Rd., Brgy. Marcelo,
Green Village, Parañaque City 1700

Attention: *AAA*

Gentlemen :

This refers to your request for a ruling that the joint venture between First Balfour, Inc. and MRAIL, Inc. (First Balfour-MRAIL Joint Venture), formed for the purpose of undertaking the *Rehabilitation of LRT Line 1 Rectifier Substations* ("JV Project"), is exempt from the two percent (2%) creditable withholding tax pursuant to Revenue Regulations (RR) No. 14-2002, as amended by RR No. 11-2018.

Documents submitted disclosed that First Balfour-MRAIL Joint Venture is an unincorporated joint venture formed for the purpose of undertaking the JV Project. The Joint Venture, with Special Contractor's License No. JV-18-1855 originally issued on May 31, 2019 by the Philippine Contractors Accreditation Board (PCAB), is composed of two (2) domestic corporations duly registered with the Securities and Exchange Commission (SEC), Bureau of Internal Revenue (BIR), and PCAB, namely:

1. **First Balfour, Inc.**, with Taxpayers Identification Number (TIN) 000-000-000-000, SEC Registration No. 39903, and PCAB Contractor's License No. 749 originally issued on February 19, 1970; and

2. **MRAIL, Inc.**, with TIN 000-000-000-000, SEC Registration No. CS200908797, and PCAB Contractor's License Form No. 34932 originally issued on January 10, 2011.

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The herein co-venturers have mutually bind each other to contribute to the Joint Venture in accordance with the following participation shares — First Balfour, Inc. — fifty-one percent (51%), and MRAIL, Inc. — forty-nine percent (49%) share, for all the necessary capital, equipment, technical personnel, management, supervision, and other efforts and resources for the proper execution or implementation of the Joint Venture Project and to extend to each other their respective fullest cooperation and best effort towards the successful construction and completion of the Joint Venture Project in accordance with the Project Contract.

On January 03, 2019, First Balfour-MRAIL Joint Venture was registered with the BIR, as a regular taxable corporation liable for corporate income tax, and was issued with TIN 000-000-000-000. Hence, this request.

In reply, please be informed that pursuant to Section 22 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, the term "corporation" shall include partnerships, no matter how created or organized, joint stock companies, joint accounts *(cuentas en participacion)*, associations or insurance companies, but does not include general professional partnerships and a 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 2.57.5 (5) of RR No. 2-98, as amended, provides that:

*"**SECTION 2.57.5. Exemption from Withholding.** — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:*

xxx xxx xxx

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

xxx xxx xxx

*(5) Joint ventures 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. Provided, however, **joint ventures or consortium formed for the purpose of undertaking construction projects shall comply with the following conditions to be considered as joint venture not taxable as a***

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corporation:

a) Should involve joining or pooling of resources by licensed local contracts; that is, licensed as general contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI);

b) These local contractors are engaged in construction business; and

c) The Joint Venture itself must likewise be duly licensed as such by the PCAB of the DTI."

Moreover, Section 3 of RR No. 10-2012, implementing Section 22 (B) of the NIRC of 1997, states that:

"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).

xxx xxx xxx

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."

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Such being the case, the First Balfour-MRAIL Joint Venture formed for the purpose of undertaking the *Rehabilitation of LRT Line 1 Rectifier Substations* is considered a joint venture not taxable as a corporation for complying with the conditions provided in RR No. 10-2012, *i.e.*, (1) the Joint Venture 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 Joint Venture itself is duly licensed by PCAB; and therefore not subject to the corporate income tax under Section 27 (A) of the NIRC of 1997, as amended.

Furthermore, the gross payments to the First Balfour-MRAIL Joint Venture on the Joint Venture Project are likewise not subject to the 2% creditable withholding tax prescribed under Section 57 (B) of the same Code, as implemented by RR No. 2-98, as amended.

First Balfour-MRAIL 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 NIRC of 1997, as amended, on their taxable income during each taxable year respectively derived by them from the aforesaid construction project. *(BIR Ruling No. 1421-18 dated December 7, 2018)*

It should be emphasized that the respective net income of the co-venturers derived from the Joint Venture Project is subject to the creditable withholding tax imposed under Section 57 of the NIRC of 1997, as amended, and implemented by RR No. 2-98, as amended. Thus, before First Balfour-MRAIL Joint Venture distributes the net income to the co-venturers, pursuant to their agreed profits/income sharing, it shall withhold the tax based on the net income of its co-venturers and remit the same to the BIR. *(BIR Ruling No. 1421-18 dated December 7, 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. [1]

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,

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

Footnotes

1. Section 4 of RR No. 10-2012.

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