October 12, 2018

BIR RULING NO. 1244-18

Sec. 22 (B) NIRC; RR 14-02; RR 10-12; BIR Ruling No. 176-14; BIR Ruling No. 475-14

Advanced Foundation Construction Systems Corp./
M.G. Lualhati Construction Corp. (JV)
Rm. 407 PASDA Mansion, No. 77 Panay cor. Timog Avenue
Barangay Paligsahan, Diliman, Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 24, 2014, requesting for a ruling that the joint venture between Advanced Foundation Construction Systems Corporation and M.G. Lualhati Construction Corporation for the purpose of undertaking the construction of the *Contract Package-ID No. 14Z00007 Network Development-Construction of By-Passes/Diversion Roads, Construction of Laoag City By-Pass Road Including Bridge, Laoag City, Ilocos Norte*, ("JV Project") is exempt from the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) No. 014-02.

Documents submitted disclosed that Advanced Foundation Construction Systems Corporation/M.G. Lualhati Construction Corporation Joint Venture ("JV"), with Tax Identification Number (TIN) 000-000-000-000 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. JV-13-828 first issued on June 6, 2014; that on the other hand, Advanced Foundation Construction Systems Corporation is registered with the BIR with TIN 000-000-000-000 and is engaged in the business of construction of foundations, deep excavations, ground improvement, ground water control and the manufacture of equipment related thereto; that it is also registered with the PCAB with Contractor's License No. 15449 first issued on October 2, 1992; that M.G. Lualhati Construction Corporation is likewise registered with the BIR with TIN No. 000-000-000-000 and is engaged in general construction; that it is also registered with the PCAB with Contractor's License No. 35373 first issued on October 4, 2011; that the JV entered into a contract with the Department of Public Works and Highways for the construction and completion of the afore-mentioned JV Project;

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and that the herein co-venturers have mutually agreed to contribute to the joint venture, all the necessary capital equipment's technical personnel, management supervision, and other efforts and resources for the proper prosecution or implementation of the project and to extend to each other their respective fullest cooperation and best efforts towards profitable execution and success of the project in accordance with approved plans and specifications to complete the same based on the approved work schedule; and that the co-venturers agreed that their respective proportionate share in the profits and losses of the Joint Venture shall be 51% for Advanced Foundation Construction Systems Corporation and 49% for M.G. Lualhati Construction Corporation.

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 2.57.5 of RR No. 2-98, as amended by RR 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:

> "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).
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> xxx xxx xxx

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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, Advanced Foundation Construction Systems Corporation/M.G. Lualhati Construction of the Corporation Joint Venture formed for the purpose of undertaking the construction of the *Contract Package-ID No. 14Z00007 Network Development-Construction of By-Passes/Diversion Roads, Construction of Laoag City By-Pass Road Including Bridge, Laoag City, Ilocos Norte*, with the Department of Public Works and Highways 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 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 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 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. 475-14 dated November 26, 2014)*.

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 Tax Code of 1997, as amended, and implemented by RR 2-98, as amended. Thus, before Advanced Foundation Construction Systems Corporation/Allencon Development Corporation 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. 475-14 dated November 26, 2014)*.

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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,

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

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