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

Sec. 22(B), 1997 NIRC; RR 14-02; RR 10-12
BIR Ruling No. 438-15 BIR Ruling No. 475-14
#013-2018
1-10-2018

Gemma Construction Supply, Inc.
Pantua Village, Koronadal City

Attention : Ms. Lora B. Uy
Chairman

Gentlemen:

This refers to your letters dated December 14, 2015 and September 19, 2016 requesting for a ruling that the joint venture between BSP & Company Inc./ Gemma Construction Supply. Inc. JV (Joint Venture for brevity) for the purpose of pre-qualifying and undertaking the Contract Package III-Mindanao, Lot 3.3, Bukidnon-Cotabato Road in North Cotabato, ("JV Project") is exempt from the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) No. 014-02.

Documents submitted disclosed that BSP & Company Inc./Gemma Construction Supply. Inc. JV was registered with Revenue District Office (RDO) No. 111 with TIN). The JV is also registered with the Philippine Contractors Accreditation Board (PCAB) under Special Contractor's License No. with date of first issue on January 29, 2015 (validity period of the Special Contractors License is September 8, 2016 to June 30, 2017).

On the other hand, BSP & Company Inc. (BSP for brevity) with TIN is a domestic corporation with registered address at BSP & Co. Compound, RMT Industrial Complex, Tunasan, Muntinlupa City. It is registered with PCAB under Contractor's License No. with July 1, 2016 as its registration date (No.) and whose validity period is from July 1, 2016 to June 30, 2019. BSP was first issued its Contractor's License on May 12, 1995 whose principal classification is General Engineering and categorized as an AAA Contractor.

Gemma Construction Supply Inc. (GCSI) with TIN is likewise a corporation with registered address at Pantua Village, Zone III, Koronadal City. It is also registered with PCAB under Contractor's License No. with June 24, 2016 as its registration date (No.) and whose validity period is from July 1, 2016 to June 30, 2019. GCSI was first issued its Contractor's License on May 23, 1979 whose principal classification is General Engineering and categorized as an AAA Contractor.

On November 6, 2015, the JV entered into a contract with the Department of Public Works and Highways (DPWH) for the construction and completion of the afore-mentioned joint venture project; and that the herein co-venturers have mutually agreed 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; and that the co-venturers agreed that their respective proportionate share in the profits and losses of the Joint Venture shall be 51% for BSP and 49% for GCSI.

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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 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:

"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 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."

Considering that BSP & Company Inc./Gemma Construction Supply, Inc. JV was formed for the purpose of undertaking the [redacted] Contract Package III - Mindanao, Lot 3.3, Bukidnon-Cotabato Road, North Cotabato and their arrangement complies with the conditions provided in RR 10-2012, i.e., (1) the JV is for the undertaking of construction project; (2) the JV

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should involve 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 must likewise be duly licensed by PCAB, and as such not subject to the corporate income tax under Section 27 (A) of the Tax Code of 1997, as amended.

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 2-98, as amended by RR No. 14-2002. (Section 4 (B) (5) of RR No. 14-2002 dated September 9, 2002)

The Department of Public Works and Highways being a government agency shall, before making payment on account of each purchase of goods and services which shall be subject to the value-added tax imposed in Sections 106 and 108 of the Tax Code of 1997, as amended, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof pursuant to Section 114 (C) of the same Code.

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 incomes of the co-venturers derived from the joint venture project are subject to the CWT imposed under Section 57 of the Tax Code of 1997, as amended, and implemented by RR 2-98, as amended. Thus, before BSP & Company Inc./Gemma Construction Supply, Inc. 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)

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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