October 23, 2018

BIR RULING NO. 1309-18

Sec. 22 (B) of the NIRC; RR 14-02; RR 10-12; BIR Ruling No. 013-18

Tokwing Construction Corporation/
FR Espiritu, Jr. Builders (Joint Venture)
Lot 35 Rodriguez Drive, Rodriguez Subd., Baesa,
Quezon City 1106

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 18, 2018, requesting for a ruling that the joint venture between Tokwing Construction Corporation and FR Espiritu, Jr. Builders for the purpose of undertaking the *Rehabilitation of Dike System along Cura-Labugaon River (Breached and Eroded Dike, Left and Right Bank), Laoag River Basin Flood Control and SABO Projects*, ("JV Project") is exempt from the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) No. 014-02.

Documents submitted disclosed that Tokwing Construction Corporation/FR Espiritu, Jr. Builders 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-17-118 first issued on August 9, 2017; that on the other hand, Tokwing Construction Corporation is registered with the BIR with TIN 000-000-000-000 and is engaged in general construction business, including the constructing, enlarging, repairing, developing or engaging in any work upon buildings, houses and condominiums, roads, plants, bridges, airfields, piers, waterworks, railroads and other structures; that it is also registered with the PCAB with Contractor's License No. 9650 first issued on June 11, 1987; that FR Espiritu, Jr. Builders is likewise registered with the BIR with TIN 000-000-000-000 and is engaged in general construction; that it is also registered with the PCAB with Contractor's License No. 36719 first issued on April 16, 2013; that the JV entered into a contract with the Government of the Republic of the Philippines through its Department of Public Works and Highways for the rehabilitation and completion of the afore-mentioned JV Project; and that the herein co-ventures have mutually agreed to

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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 Tokwing Construction Corporation and 49% for FR Espiritu, Jr. Builders.

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. 10-2010 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, Tokwing Construction Corporation/FR Espiritu, Jr. Builders Joint Venture formed for the purpose of undertaking the *Rehabilitation of Dike System along Cura-Labugaon River (Breached and Eroded Dike, Left and Right Bank), Laoag River Basin Flood Control and SABO Projects*, 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 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 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-ventures 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. 013-18 dated January 10, 2018)*.

It should be emphasized that the respective net income of the co-ventures 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 Tokwing Construction Corporation/FR Espiritu, Jr. Builders Joint

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Venture distributes the net income of the co-ventures, pursuant to their agreed profits/income sharing, it shall withhold that tax based on the net income of its co-ventures *(BIR Ruling No. 013-18 dated January 10, 2018)*.

Finally, the co-ventures 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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