November 15, 2018

BIR RULING NO. 1346-18

Section 57 (B) of the NIRC, as amended; RR 2-98; BIR Ruling No. 018-03

Sycip Gorres Velayo & Co.
6760 Ayala Avenue
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 31, 2010 requesting, in behalf of **Citra Metro Manila Tollways Corporation** ("**CMMTC**" or the "**Company**"), for confirmation of your opinion that CMMTC is not required to withhold creditable taxes prescribed under Section 57 of the National Internal Revenue Code of 1997, as amended (the "Tax Code") and was implemented by Revenue Regulations ("RR") No. 2-98, as amended, on the distribution of revenues among the contracting parties based on the Revenue Sharing arrangement of the Joint Venture Agreement to design, construct, manage and operate the toll facilities in the South Metro Manila Skyway ("SMMS").

Documents submitted disclose that Citra Metro Manila Tollways Corporation is a joint venture corporation, duly organized and existing under the laws of the Philippines, by P.T. Citra Lamtoro Gung Persada, Indonesia's premier toll road developer, and the Philippine National Construction Corporation, a government-owned and controlled corporation, which by virtue of Presidential Decree 1113, holds the franchise to construct, operate, and maintain toll facilities in the South Luzon Expressway ("SLEX"), the North Luzon Expressway ("NLEX") and the Metro Manila Expressway. The terms of the Joint Venture Agreement are provided in the Business and Joint Venture Agreement dated August 30, 1995 ("JV Agreement").

CMMTC with Tax Identification Number 000-000-000, is a domestic corporation and registered with the Securities and Exchange Commission (SEC) under Registration No. ASO95-011812. On November 27, 1995, the Philippine government, through the Toll

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Regulatory Board ("TRB") authorized CMMTC the right to design, construct and finance pursuant to a build-and-transfer scheme, the following government "flagship" projects (or the "Project Roads"): (i) the Metro Manila Skyway Project, a skyway system consisting of world-class elevated tollway, road network that provides considerably improved roadway capacity, rehabilitated roads, upgraded and newly constructed facilities for commuters who traverse the SLEX and the NLEX; and (ii) the proposed Metro Manila Tollways or Circumferential Road ("C-6").

CMMTC registered with the Board of Investments ("BOI") in accordance with the provisions of the Omnibus Investments Code of 1987, and on February 6, 1997, the BOI granted CMMTC a "Pioneer Status" as the new "Operator of Metro Manila Skyway Project." The BOI registration entitled the Company to income tax holiday ("ITH") and other incentives prescribed under E.O. 226, as amended by R.A. 7918 for the period of six years from January 1, 2004 until December 31, 2009. [1]

CMMTC, the PNCC and the Philippine government, through the TRB, as *Grantor*, also entered into a Supplemental Toll Operation Agreement ("STOA") dated November 27, 1995, covering the SMMS. Under the STOA, CMMTC, as the *Investor* enjoys the primary and exclusive privilege, responsibility and obligation to design, construct and finance the SMMS pursuant to a build-and-transfer scheme. PNCC, as *Operator*, on the other hand, shall have the primary and exclusive privilege, responsibility and obligation for the operation, maintenance and financing of the SMMS. Under the STOA, PNCC assigned the actual operation and management of the SMMS to its wholly-owned subsidiary, the PNCC Skyway Corporation ("PSC"). The Project Roads, under the STOA, shall be owned by the Philippine government, where the legal transfer of ownership shall be deemed to occur automatically on a continuous basis in accordance with the progress of the construction. In the Amendment to the Supplemental Toll Operations Agreement dated July 18, 2007 (the "ASTOA"), CMMTC, the PNCC and PSC (hereinafter collectively referred to as the "Parties") agreed, among others, for the "successful and seamless turnover" of the operation and maintenance for the SMMS from PSC to a new corporation, Skyway O & M Corporation ("SOMCO"). [2]

Under the ASTOA, the Parties further agreed on the ownership over the Toll Road Revenue, in that:

> "Section 7.02. **Toll Road Revenue** . . . is **the property of both the Investor and the Operator, and shall be owned and shared between them in accordance with the revenue sharing agreement** set forth in Section 5.04 of the Business and Joint Venture Agreement or as may be subsequently agreed upon in writing by the Investor and the Operator, which agreement shall be subject to the approval of the Grantor as may be required by law." *(Emphasis supplied)*

The foregoing is consistent with the terms expressed in Section 5.01 of the JV

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Agreement, which provides that:

> "**Ownership of Toll Road Revenue**. All Toll Road Revenue collected pursuant to the Toll Operation Agreement shall become the property of the Joint Venture Corporation and PNCC, proportionately and/or as determined in accordance with the Revenue Sharing Arrangement set forth in Section 5.04. **Each of the Joint Venture Corporation and PNCC shall become owner of its share of the Toll revenue as of the collection thereof by PNCC, as operator, without need of any concurrent or subsequent legal or other act**. . ." (Emphasis supplied)

Section 5.04 of the JV Agreement generally provides for a ten percent (10%) share of Total Revenue for the Operator and ninety percent (90%) share of Total Revenue for CMMTC.

The ASTOA further requires that the "Toll Road Revenue" collected by the Operator should be deposited daily in a Special Account to be opened and operated in accordance with Sections 5.02 and 5.03 of the JV Agreement or any other subsequent agreement entered into by the Operator and the Investor, without prejudice to the Operation and Maintenance Manual and Procedures.

Sections 5.02 and 5.03 of the JV Agreement provides that,

> "Section 5.02. **Collection of Toll**. — Throughout the franchise period applicable to each Toll Road (or any phase or stage thereof), PNCC, as operator, shall collect Toll in accordance with the Toll Operation Agreement and the Toll Collection Manual & Procedure the terms and conditions of which shall be as may be agreed by the Parties, and approved by the TRB."

> "Section 5.03. **Special Account**. — All Toll Road Revenue shall be deposited by PNCC daily in the Special Account. The Special Account shall be opened by the Joint Venture Corporation with such bank or financial institution as may be chosen by the Joint Venture Corporation within the Metro Manila area. The operation of the Special Account shall be subject to the Escrow Agreement to be agreed upon by the Joint Venture Corporation, PNCC and the depository bank or financial institution.
>
> All Toll Road Revenue shall be deposited in the Special Account without any deduction or withholding, and free from any set-off or counterclaim on account of any tax, PNCC's revenue share, or any interest thereon, or for any reason whatsoever."

On April 11, 2007, CMMTC, as *Borrower*, entered into a Restated Master Agreement with the Philippine National Bank ("PNB") and Land Bank of the Philippines, as *Lenders*, and PNB through the PNB Trust Banking Group, as *Collateral Agent*. [3] CMMTC and the Lenders entered into the Restated Master Agreement for the restructuring and payment of CMMTC's outstanding loans with various financial and banking institutions. The terms of

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the Restated Master Agreement include the creation of the Special Account (Section 7.03) in which it is provides that, *"[a]ll amounts which from time to time are or are required to be deposited in or which are standing to the credit of the Special Account shall be applied by the Escrow Agent . . ."* according to the terms specified in the Restated Master Agreement. Consistent with the provisions of the Master Agreement dated September 25, 1996, PNB Trust and Banking Group is designated as the Escrow Agent of the Special Account. As the Escrow Agent, the PNB Trust and Banking Group is obliged, among other tasks, to establish, maintain and manage the PNCC/CMMTC Special Account, pick-up and deposit to the Special Account all Toll Road Revenues, and distribute total collections among PNCC, CMMTC and the toll operator.

On December 21, 2007, the Parties entered into a Memorandum of Agreement ("MOA") that sets forth, among others, the exclusive privilege, responsibility and obligation of each of the parties including the successful and seamless assumption by SOMCO of the operation and maintenance responsibilities for the SMMS from PSC beginning 10:00 p.m. of December 31, 2007.

Under the MOA, the Parties also agreed on their respective percentage share in the gross toll revenues from the operation of the SMMS, as follows: ten percent (10%) to the Operator's ("SOMCO") Account and ninety percent (90%) to CMMTC's Project Control Account.

The operator of the SMMS receives its revenues on the operation of the SMMS from the Operator's Account, for which the operator shall be responsible for the payment of the corresponding income tax due thereon. On the other hand, the Toll Road Revenue is taken from the CMMTC's Project Control Account, after reduction of returns, discounts, merchant fees, and commissions, which may be shown in the following computation:

Gross Toll Revenues	x	10%	=	Operator's Account

Gross Toll Revenues	x	90%	=	CMMTC's Project Control Account

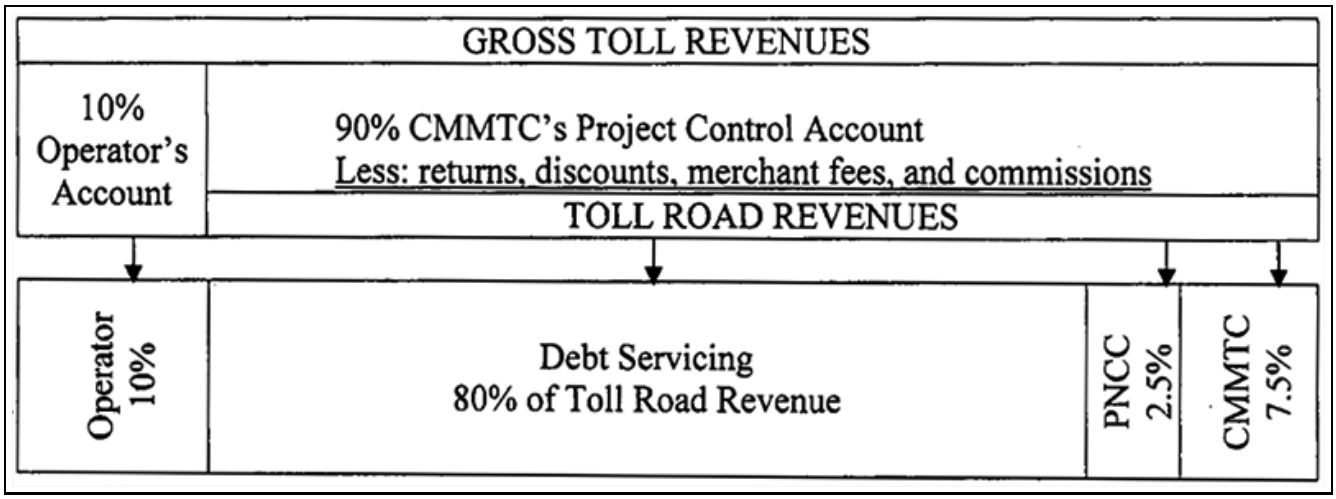
CMMTC's Project Control Account
Less: returns, discounts, merchant fees, and commissions
_____
Toll Road Revenues

Pursuant to the MOA, eighty percent (80%) of the Total Toll Road Revenue is used for debt servicing. PNCC, on the other hand receives its 2.5% share in the Total Toll Road Revenue for which PNCC pays the corresponding income tax when due. Effectively,

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CMMTC's share in the gross revenues received from the operation of the SMMS amounts to only 7.5% of the Toll Road Revenue.

The distribution and ownership over the Toll Road Revenues may be illustrated as follows:



In a letter dated December 28, 2007, the TRB granted SOMCO the authority to operate and maintain SMMS effective 10:00 p.m. of December 31, 2007. Accordingly, SOMCO replaced PSC and assumed the operations and maintenance responsibilities over the full operations of SMMS beginning January 1, 2008.

Upon validation by the Philippine government, SOMCO stepped into the shoes of PNCC as Operator, and all of the agreements and arrangements entered into by CMMTC with PNCC, as well as, CMMTC and the Lender banks and PNB Trust and Banking Group are deemed applicable to SOMCO. Consequently, in conformity with the terms of the JV Agreement, PNCC, CMMTC (the *Investor*) and SOMCO (the new *Operator*), are deemed owners of their respective shares of the Toll Road Revenue as of the collection thereof without need of any concurrent or subsequent legal or other act. [4]

As discussed, CMMTC's source of revenues is its share in the Toll Road Revenue collected from the motorists who use the SMMS.

The SMMS is divided into segments and are operated by a combination of both the Closed System and Electronic System of toll roads. In the Closed System, vehicles collect a ticket when entering the highway and upon exit the driver must pay the amount listed for the given exit. In an Electronic System tolls are usually collected with the use of a transponder mounted on the windshield of each vehicle which is debited for each use of the toll road. Customers-commuters, on the other hand, pay for the services as they are driving through the toll gates constructed for the collection of the toll fees, in the Closed System, or when they

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pre-load their transponder with amount for the payment of the toll fees.

A. Closed System — Cash payment of toll fees upon passage at the toll gate

Under the Closed System, the cash revenues are collected from the motorist and flows daily to the Special Account in the following manner:

1. At the toll plaza, the motorist hands the magnetic toll card and pays either the teller at the booth or the ambulant collector the corresponding toll fees due on the motorist's vehicle type;

2. The teller collects the cash in payment of the toll fees, directly from the motorist or from the ambulant collector. The teller then prepares a report and turns over the cash collected with the report of the collection to the Plaza Officer;

3. The Plaza Officer counts the cash collection and validates the teller's report, and both the cash collection and the report are turned over to the Cash Specialist;

4. The Cash Specialist again counts the cash collection and revalidates the reports of various tellers. Thereafter, the Cash Specialist transmits the cash collection and the tellers' reports from the Toll Plaza to the Cash Officer;

5. The Cash Officer consolidates all the cash collected and the tellers' reports of the collection from several Toll Plazas in an Over-all Cash Count Sheet and deposits the cash collection to the bank;

6. The representative of PNB Trust and Banking Group receives the cash deposit, signs the deposit slip and the Over-all Cash Count Sheet presented by the Cash Officer and deposits the cash collection in the Special Account; and

7. The Escrow Agent (PNB Trust and Banking Group) distributes to the owners of the Special Account their corresponding share. [5]

   CMMTC records the cash collection and recognizes toll revenues and toll payables, as well as, the costs and other expenses with the following journal entries:

   Cash in Bank-CMMTC's project control account (90%) — x x x

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Returns, discounts, merchant fees, and commissions — x x x

Toll Payable-PNCC (2.5% of the Toll Road Revenue) [6] *— x x x*

Toll Revenue (87.5% of the Toll Road Revenue) — x x x

Upon payment of the loans and distribution of the Escrow Agent to PNCC, CMMTC records the payment of both the loans payable and the toll payables with the following journal entries:

Toll Payable-PNCC (2.5% of the Toll Road Revenue) — x x x

Loans Payable (80% of the Toll Road Revenue) — x x x

Cash in Bank-CMMTC's project control account (82.5%) — x x x

B. Electronic System — Advance payment and activation of e-Card Pass and system recognition of Toll Road Revenue upon passage at the toll gate

On the other hand, under the Electronic System, Toll Road Revenues are generated and deposited in the Special Account through a series of transactions, as follows:

1. The motorist acquires a transponder (and other replacement parts, when necessary) for their vehicles from a third party distributor, Capstone Technologies, Inc., an entity operating independent of CMMTC (as well as, the PNCC and SOMCO);

2. The motorist then loads pre-paid pass, which is referred to as the "e-Pass" into the transponder, [7] which may be acquired in various manner that includes the following:

    2.1. Setting up with the Company an Auto-replenishment Account that is connected to the bank account of the motorist, which is then debited upon instruction of motorist to load their transponder with the e-Pass;

    2.2. Acquisition of the e-Pass load at the Customer Service Centers of CMMTC or off-site replenishment centers, which may be paid in cash or credit card that would be settled with the Company by the issuing bank of the cardholder;

    2.3. Acquisition of e-Pass through the internet and paid through the "banknetonline" system of the Company; or

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2.4. Acquisition of e-Pass Card through kiosk vending machines, which are activated by the Company's Systems Operator upon request from the motorist;

Note that the cash collected by the Company from the e-Pass loads are deposited in a General Account, which is recorded by CMMTC with the following entries:

Cash in Bank — x x x

Returns, discounts, merchant fees, and commissions — x x x

Prepaid Toll — x x x

3. Motorist passes through the toll gate, which activates the system to inform the Company of the usage of the pass;

4. The CMMTC Cashier prepares a report of the Toll Road Revenues earned from the usage of the pass and prepares the instruction to PNB to debit the General Account with an amount equivalent to the Toll Road Revenues earned from the usage of the pass and transfer/credit the same to the Special Account;

CMMTC records the toll revenue and its toll payables with the following journal entries:

Prepaid Toll — x x x

Toll Payable-PNCC (2.5% of the Toll Road Revenue) — x x x

Toll Payable-SOMCO (10% of gross to revenue) — x x x

Toll Revenue (87.5% of the Toll Road Revenue) — x x x

5. The representative of PNB Trust and Banking Group receives the report and the instruction, debits the General Account with the amount indicated in the report and based on the instruction, credits the Special Account of the joint owners of the Total Toll Road Revenues with the same amount; and

The transfer of the cash balance representing the amount of revenues earned from the e-Pass is recorded as follows:

Cash in Bank-CMMTC 's project control account (90%) —x x x

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Cash in Bank-Operator's account (10%) — x x x

Cash in Bank — x x x

6. The Escrow Agent (PNB Trust and Banking Group) distributes to the owners of the Special Account their corresponding share. [8]

For the payment of the loans and distribution of the Escrow Agent to PNCC and SOMCO, CMMTC records the payment of both the loans payable and the toll payables (to SOMCO and PNCC) with the following journal entries:

Toll Payable-SOMCO (10%) — x x x

Cash in Bank-Operator's account (10%) — x x x

Toll Payable-PNCC (2.5% of the Toll Road Revenue) — x x x

Loans Payable (80% of the Toll Road Revenue) — x x x

Cash in Bank-CMMTC's project control account (82.5%) — x x x

In either Systems, the PNB Trust Banking Group, which manages the Escrow Account, distributes to CMMTC, PNCC, and SOMCO their respective shares of the Total Toll Revenues from the SMMS net of the amounts earmarked for the payment of loans, returns, discounts, merchant fees, and commissions and other costs related to the maintenance of the account. [9] Pursuant to the ASTOA, SOMCO, as Replacement Operator receives the ten percent (10%) of the Total Toll Revenues as its share in the SMMS operations. In accordance with the MOA, PNCC gets its 2.5% share from the 90% initially remitted to the CMMTC's project control account, while under the Restated Master Agreement, eighty percent (80%) of the Total Toll Revenues will be set aside for the payment of the loans. In the end, only 7.5% of the Total Toll Revenue would be left for CMMTC as its share in the Total Toll Revenues.

As shown by the sample journal entries, the Company only recognizes as revenues its share in the Total Toll Revenues earned from the motorists plying the SMMS. Similarly, amounts belonging to either PNCC or SOMCO, which are in the custody of CMMTC are recorded by the Company under a Toll Payable account as its liability.

Based on the foregoing representations, you request for confirmation of your opinion that CMMTC, being only one of the co-venturers in the consortium operating the South Metro Manila Skyway or the SMMS, is not liable to withhold creditable taxes prescribed under Section 57 of the Tax Code and implemented by RR No. 2-98, as amended, on the

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share of either PNCC or SOMCO, under the revenue sharing arrangement of the Joint Venture Agreement to design, construct, manage and operate the toll facilities in the SMMS. There will be no revenue loss on the part of the government since each of the co-venturer in the SMMS will report as income their respective share in the Toll Road Revenue received under the Joint Venture Agreement and pay the corresponding income tax on their respective income, when due. Specifically, it is your position that CMMTC has no obligation to withhold creditable taxes on the amounts remitted, as follows:

1. On the distribution by the Escrow Agent (PNB Trust and Banking Group) of the share of PNCC of the Total Toll Revenues taken from the CMMTC's project control account, under both the Closed and the Electronic Systems; and

2. On the distribution by the Escrow Agent to SOMCO of its share in the Total Toll Revenues from the Electronic System in payment of the toll payables of CMMTC.

In reply, please be informed that Section 57 (B) of the National Internal Revenue Code of 1997, as amended provides:

Sec. 57. Withholding of Tax at Source. —

xxx xxx xxx

B) Withholding of Creditable Tax at Source. — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

In connection thereto, Section 2.57 (B) of Revenue Regulations 2-98, provides, as follows:

SECTION 2.57. Withholding of Tax at Source. —

(B) Creditable Withholding Tax. — Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income. Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable

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in nature.

It should be emphasized that while the withholding tax system is more commonly regarded as a mere procedure through which taxes are collected, the importance of following the above rules in ensuring the prompt and efficient collection of taxes should not be ignored. For not only does our withholding tax system encourage voluntary compliance on the part of taxpayers, it also prevents delinquencies and spares the government the effort of collecting through the more complicated means and remedies. (BIR Ruling No. 018-03 dated November 24, 2003)

Under this system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. Thus, taxes withheld are in the nature of advance payment by a taxpayer in order to extinguish his possible tax obligation. Taxes withheld are installments on the annual tax which may be due at the end of the taxable year.

The withheld amounts are remitted to the BIR and are considered creditable withholding taxes, creditable against income tax liability for that year. Withholding taxes are "deposits" which are subject to adjustments at the proper time when the complete tax liability is determined. [10]

Distribution of Toll revenues according to the Respective Shares of the Owners do not Constitute Income Payments Subject to Withholding Tax

The obligation to withhold taxes is premised on the condition that amounts remitted involve income payment from the payor such that the payee received taxable income.

Income, in a broad sense, means all wealth that flows into the taxpayer other than as return of capital. [11] Income for tax purposes is the amount of money coming to a person or corporation within a specified time, whether as payment for services, interest, or profits from investment. [12]

CMMTC, as outlined in either the Closed System or the Electronic System, only records as revenue its share in the Total Toll Revenues pursuant to the ASTOA and the MOA that the Company has entered into with the other contracting parties. Consequently, any amount, which CMMTC receives are reported by the Company as its liability in a Toll Payable Account.

Under the Closed System, amount received from the motorists plying the SMMS are collected and deposited in the Special Account for distribution by the Escrow Agent. Upon the distribution by the Escrow Agent, CMMTC recognizes only as revenues its share of the

Toll Road Revenues. At the same time, CMMTC recognizes as liability, PNCC's share in the Toll Road Revenues the amounts belonging to PNCC that are deposited in the CMMTC project control account.

As discussed under the Electronic System, CMMTC receives payments of toll fees when motorists load pre-paid pass into their transponders. In these cases, the cash received, either from motorists or from the issuing banks of their credit cards, are recorded by the Company as advance payments. Similar to the Closed System, revenues in an Electronic System are recognized only when the motorists passes through the toll gates, which activates the transponder and informs the system that revenues have been earned from these advance payments. As mentioned, it is only then that the amount CMMTC has previously collected will form part of the gross toll revenue. Any amounts belonging to either PNCC or SOMCO, as their respective shares in the gross toll revenue, which are in the custody of CMMTC are recorded in the liability account, Toll Payable Account.

The ASTOA and the MOA, consistently support the fact that the gross toll revenue generated from the operation of the SMMS are owned in common by CMMTC, SOMCO and PNCC based on their agreed sharing arrangement.

The receipt of cash advance will not result to a flow of wealth because the owner-member will also recognize a liability. **Since the advances are not considered as income, it is likewise not subject to income tax or creditable withholding tax, there being no income payment**. The advances are not payment for services, interest or profits. The advances are also not subject to VAT since they are not derived from sale of goods or services." Emphasis supplied.

Based on the foregoing, when the consortium earns the revenues from the cash advance from the motorists that CMMTC has collected, wherein the Company also recognized the existence of a liability, there is no flow of wealth to CMMTC to the extent of the liability recognized. Consequently, there being no flow of wealth to CMMTC, when these amounts are eventually distributed to their respective owners by the Escrow Agent, such distribution does not constitute as CMMTC's income payments, to either PNCC or SOMCO and such distribution are neither subject to income tax nor creditable withholding tax.

The distribution of the share in the revenues of the co-owners is not subject to withholding tax because it is not one of those income payments subject to withholding tax under RR No. 2-98, as amended. It is not compensation income and is, therefore not subject to withholding tax on compensation, because it does not represent remuneration for services performed by an employee for his employer under an employer-employee relationship. [13] It is also not a professional or talent fee and the owner-members of the cooperative are not

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contractors. Neither is it one of those income payments subject to final withholding tax under Section 2.57.1 of RR No. 2-98. Clearly, the distribution of such revenues to their respective owners does not involve income payments by CMMTC to PNCC or SOMCO, and as such said distribution should not be subject to withholding tax.

CMMTC Recognizes as Revenues only its Share in the Total Toll Revenues Excluding Amounts Received in Trust under the Electronic System

CMMTC never benefited from the entire amount of monies received from the motorists as portions thereof are ultimately remitted to the other owners, either the PNCC or SOMCO. The revenue of CMMTC is limited only to its share of the gross toll revenues earned from the amounts collected as toll payments of motorists. Similarly, under the Electronic System, the Company only holds in trust the monies belonging to PNCC and SOMCO. As held by the Supreme Court in the cited cases, the amounts entrusted to the Company should not form part of CMMTC's taxable gross receipts.

In the cases of *Commissioner of Internal Revenue vs. Manila Jockey Club, Inc.* [14] and *Commissioner of Internal Revenue vs. Tour Specialists, Inc.*, [15] declared that,

> *". . . in the case of Commissioner of Internal Revenue vs. Manila Jockey Club, Inc., 108 Phil. 821, no less than the Supreme Court categorically ruled that monies received by Manila Jockey Club in trust for the account of the owners of winning horses do not form part of the gross receipts of the club since the same never belonged to it.*
>
> xxx xxx xxx
>
> *The same view was reiterated by the Supreme Court in the case of Commissioner of Internal Revenue vs. Tours Specialists, Inc., 183 SCRA 402, when it ruled that monies or receipt entrusted to the taxpayer which do not belong to them or do not redound to the taxpayer's benefit do not form part of gross receipts subject to the 3% independent contractor's tax under the National Internal Revenue Code of 1977."*

Accordingly, it can be reasonably concluded that CMMTC only earns its share in the Toll Road Revenues collected from the motorists. CMMTC merely collects revenues on behalf of its co-owners and it only holds these monies in behalf of PNCC and SOMCO, which will ultimately receive their share in the revenues upon the distribution of the Special Fund. More importantly, CMMTC is not obliged under Section 57 of the Tax Code and implemented by RR No. 2-98, as amended, to withhold taxes on the share of either PNCC or SOMCO, under the revenue sharing arrangement of the Joint Venture Agreement to design, construct, manage and operate the toll facilities in the South Metro Manila Skyway.

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This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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

Footnotes

1. Initially, CMMTC enjoyed ITH from January 1, 1999 (the date of the actual commencement commercial operations) to December 31, 2004, but on September 1, 2008 the BOI issued Board Resolution No. 31-1 S'2008, moving the effectivity period of CMMTC's ITH entitlement to January 1, 2004 until December 31, 2009. The BOI annotated this modification on the Certificate of Registration No. 96-320 issued to CMMTC.
2. In a letter dated December 13, 2007, CMMTC, as Investor under the STOA and pursuant to Section 14.02 (3) of the STOA, informed the TRB of its nomination of Skyway O & M Corporation as replacement operator of the SMMS.
3. The Restated Master Agreement supersedes all the terms and conditions of the Master Agreement dated September 25, 1996 and the Amendment Agreement dated October 16, 1996.
4. Section 5.01 of the JV Agreement.
5. Under Section 7.03 of the Restated Master Agreement it is provided that, *"[a]ll amounts which from time to time are or are required to be deposited in or which are standing to the credit of the Special Account shall be applied by the Escrow Agent . . ."* according to the terms specified in the Restated Master Agreement.
6. CMMTC nets-out the amount of Toll Payable due to PNCC with the Toll Receivable from PNCC for CMMTC's share in the Toll Revenues for the segment of the SMMS, which are operated and managed by PNCC. Thus, there could be instances where CMMTC would account for the share of PNCC from the Toll Revenues received by CMMTC with a debit entry to the *Toll Receivable-PNCC* account.
7. At this point, the Company merely records the receipt of payment (whether in cash or receivables from the issuing bank of the credit card used in payment) and the liability for the unearned revenues, "Prepaid Toll Account," and amounts payable to PNCC and SOMCO.
8. To reiterate, Section 7.03 of the Restated Master Agreement it is provided that, *"[a]ll amounts which from time to time are or are required to be deposited in or which are standing to the credit of the Special Account shall be applied by the Escrow Agent . . ."* according to the terms specified in the Restated Master Agreement.
9. The MOA defines Total Toll Revenues from the SMMS as the gross toll revenue less returns, discounts, merchant fees, and commissions.
10. CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC. vs. THE HON.

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EXECUTIVE SECRETARY ALBERTO ROMULO, et al., (G.R. No. 160756, March 9, 2010.) citing *Gibbs vs. Commissioner of Internal Revenue*, 15 SCRA 318).

11. Section 36, Revenue Regulations No. 2.
12. *Fisher vs. Trinidad*, 43 Phil. 973.
13. Section 2.78.1 (A), RR No. 2-98.
14. 108 Phil. 821.
15. 183 SCRA 402.

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