December 7, 2018

BIR RULING NO. 1421-18

Section 22 (B) of the National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 10-2012; BIR Ruling No. 148-2018

Cebu Link Joint Venture
Unit 1001, 10th Floor Insular Life Cebu Business Centre,
Mindanao Avenue cor. Biliran Road, Cebu Business Park,
Cebu City

Attention: *AAA*

Gentlemen :

This refers to your request for a ruling for the Registration of Cebu Link Joint Venture as a non-taxable joint venture pursuant to Section 22 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Regulations (RR) No. 10-2012 [1] dated June 01, 2012.

Documents submitted disclosed that Cebu Link Joint Venture ("JV") is an unincorporated joint venture which was awarded with the design and build construction project of a bridge that would link Cebu City to the Municipality of Cordova known as Cebu-Cordova Link Expressway ("JV Project") by the Metro Pacific Tollways Development Corporation or Cebu Cordova Link Expressway Corporation. The JV Project is approximately 8.25 km long.

The JV, with Special Contractor's License No. SL1-SN-15802 which was first issued on December 15, 2017 by the Philippine Contractors Accreditation Board (PCAB), is composed of three (3) domestic corporations duly registered with the Securities and Exchange Commission (SEC), Bureau of Internal Revenue (BIR), and PCAB, namely:

1. Acciona Construction Philippines, Inc. ("ACPI"), with Taxpayers Identification Number (TIN) 000-000-000-000, SEC Registration No. CS201739614, and PCAB Special Contractor's License No. SL1-SN-15801 which was first issued on December 15, 2017;

2. First Balfour, Inc. ("FBI"), with TIN 000-000-000-000, SEC

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Registration No. 39903, and PCAB Contractor's License Form No. 17-04930 which was first issued on February 19, 1970; and

3. D.M. Consunji, Inc. ("DMCI"), with TIN 000-000-000-000, SEC Registration No. 9439, and PCAB Contractor's License Form No. 17-04449 which was first issued on January 30, 1969.

The herein co-venturers have mutually bind each other to contribute to the JV on the basis of — ACPI: 60%; FBI: 25% and DMCI: 15% share ("Participating Interest"), for all the necessary capital, equipment, technical personnel, management, supervision, and other efforts and resources for the proper execution or implementation of the JV Project. All revenue losses and liabilities relating to or arising in connection with the joint venture shall be shared in accordance with their Participating Interests.

On January 10, 2018, the JV was registered with the BIR as a regular taxable corporation liable for corporate income tax. Hence, this request.

In reply, please be informed that pursuant to Section 22 (B) of the 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*), 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 (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 corporation***:

a) Should involve joining or pooling of resources by licensed local contracts; that is, licensed as general contractor by the Philippine

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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.

Joint ventures involving foreign contractors may also be treated as a nontaxable corporation only if the member foreign contractor is covered by a special license as contractor by the PCAB of the 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." (Emphasis and underscoring supplied)

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

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share to the joint ventures profit."

Such being the case, the Cebu Link Joint Venture formed for the purpose of undertaking the construction of the Cebu-Cordova Link Expressway is considered as a joint venture not taxable as a corporation for complying with the conditions provided in RR No. 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 NIRC of 1997, as amended.

Furthermore, the gross payments to the JV 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 No. 2-98, as amended.

The herein JV 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. [2]

It should be emphasized that the respective net income of the co-venturers derived from the JV 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 Cebu Link 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 and remit the same to the BIR.

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. [3]

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

Footnotes

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1. Joint Venture or Consortium Formed for the Purpose of Undertaking Construction Projects and Mandatory Enrollment of Local Contractors in the Electronic Filing and Payment System (EFPS).
2. BIR Ruling No. 148-2018 dated February 18, 2018.
3. Section 4 of RR No. 10-2012.