June 16, 2021

BIR RULING NO. JV-211-21

Sec. 22 (B) NIRC; RR 14-02 & RR 10-12;
BIR Ruling Nos. 176-2014; 013-2018;
1243-2018 & 0503-2019

Valley Construction and Aggregates
and DD Likigan Construction
(Joint Venture)
Tambingan, Sabangan, Mountain Province

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 5, 2018 requesting for a ruling that the joint venture between Valley Construction and Aggregates and DD Likigan Construction (the "Joint Venture") for the purpose of undertaking the project: Improvement of Besao Mountain Province to Tubo-Abra Road Phase II (the "JV Project"), is exempt from the two percent (2%) creditable withholding tax pursuant to Revenue Regulations (RR) No. 14-2002.

Documents submitted disclosed that the parties to the joint venture, Valley Construction and Aggregates and DD Likigan Construction are both local contractors. Valley Construction and Aggregates (TIN: _____) is duly registered with the Philippine Contractors Accreditation Board (PCAB) under Contractor's License No. 2016-2045 valid until June 30, 2019. Likewise, DD Likigan Construction (TIN: _____) is also registered with PCAB under Contractor's License Form No. 2018-1079, valid until May 04, 2021. The Joint Venture is also registered with PCAB under Special Contractor's License No. SL1-SN-03271 valid until June 30, 2019.

On January 31, 2018, the Joint Venture entered into a Contract Agreement with the Provincial Government of Mountain Province to undertake the JV Project for a consideration of _____ (P_____); and that the parties to the Joint Venture agreed that their respective proportionate share in the profits and losses of the Joint Venture shall be fifty one percent (51%) for Valley Construction and

Copyright 2021 CD Technologies Asia, Inc.

Aggregates and forty nine percent (49%) for DD Likigan Construction.

In reply, please be informed that pursuant to Section 22 (B) of the National Internal Revenue Code (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

Copyright 2021 CD Technologies Asia, Inc.

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."

Such being the case, the Joint Venture formed by Valley Construction and Aggregates and DD Likigan Construction for the purpose of undertaking the project: Improvement of Besao Mountain Province to Tubo-Abra Road Phase II is considered a joint venture not taxable for having complied with the conditions provided under 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 Tax Code of 1997, as amended *(BIR Ruling No. 013-2018 dated January 10, 2018)*.

Furthermore, the gross corporate payments to the joint venture are, likewise, not subject to the 2% CWT prescribed under Section 57 (B) of the same Code, as implemented by RR No. 2-98, as amended by RR No. 14-2002. *(Section 4 (B) (5) of RR No. 14-2002 dated September 9, 2002)* as amended.

The Provincial Government of Mountain Province being a government entity 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 *(BIR Ruling No. 013-2018 dated January 10, 2018)*.

The herein Joint Venture being exempt from corporate income tax is not required to file quarterly and final adjustment returns but Valley Construction and Aggregates and DD Likigan Construction as parties to the Joint Venture, 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. 1243-2018 dated October 12, 2018)*.

It should be emphasized that the respective net income of the co-venturers derived

Copyright 2021 CD Technologies Asia, Inc.

from the JV Project is subject to the creditable withholding tax imposed under Section 57 of the Tax Code of 1997, as amended, and implemented by RR No. 2-98, as amended. Thus, before the Joint Venture distributes the net income to Valley Construction and Aggregates and DD Likigan Construction pursuant to their agreed profits/income sharing, it shall withhold the tax based on the net income of its co-venturers. *(BIR Ruling Nos. 176-14 dated November 26, 2014 and 0503-2019 dated September 6, 2019)*

Finally, Valley Construction and Aggregates and DD Likigan Construction 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 ascertained that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

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

Copyright 2021 CD Technologies Asia, Inc.