REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

**Quezon City**

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| RR 6-2001 |
| BIR Ruling No. 006-03;<br>BIR Ruling No. 153-2010 |
| OT-0224-2020<br>MAR 13 2020 |

**LEONARDO VICENTE & ASSOCIATES**
Units 55 Zeta II Building
191 Salcedo Street, Legaspi Village
Makati City

Attention: **Mr. Edgardo A. Leonardo**
*Managing Partner*

Gentlemen:

This refers to your letter dated October 8, 2018 requesting for confirmation of your opinion that the professional fees received by COWI A/S – Philippine Branch ("COWI" for brevity) from its clients are subject to the creditable withholding tax (CWT) at the rate of two percent (2%) pursuant to Section 2.57.2 (E) (3) of Revenue Regulations (RR) No. 2-98, as amended by Section 3 of RR No. 6-2001.

As represented, COWI, with TIN , is a Branch Office of COWI A/S, a foreign company organized and existing under the laws of Denmark. COWI has "License to Transact Business in the Philippines" issued by the Securities and Exchange Commission (SEC) on May 20, 2017 under SEC Registration No. . The Company is engaged in the business of providing advice, support, planning, supervision, maintenance, and management services to government and private entities in its projects and works, and all other services appurtenant and relevant thereto, subject to condition that the branch will not undertake any construction work or engage in the practice of any licensed professional, and that the branch will not undertake the management of funds, securities, portfolios or similar assets of the managed entity.

The Company entered into a consultancy agreement with Metro Pacific Tollways Development Corporation ("Metro Pacific"), with principal office at 10th Floor, MGO Building, dela Rosa corner Legazpi Streets, Legazpi Village, Makati City, to provide professional services in connection with the implementation of the Cebu-Cordova Bridge Project during the procurement and construction stages. The "Scope of Services" includes, but not limited to the following:

In General:

a) Provide the necessary professional design expertise and technical knowledge through personnel who are sufficient in number, qualified and familiar with the detailed engineering design for the Project:

b) Observe and comply with the applicable laws, rules and regulations; and

c) Comply with all reasonable instruction of the employer issued from time to time

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Normal Services:

a) Generally, to provide qualified, experienced and competent professional engineers essential or desirable to undertake the Technical Assistance / Owner's Engineer Services and other technical support services which are deemed relevant to the Project;
b) In general, the scope of consulting services will involve the Technical Assistance/Owner's Engineer Services necessary for developing an alternative design of the main bridge, the preparation of tender documents, procurement of a suitable contractor, design and construction of the proposed project. The Consultant shall coordinate its related works with all concerned stakeholders as required and necessary for the performance of the services.

   The services shall be performed in accordance with the accepted professional standards utilizing sound engineering, economic valuation practices, and environmental and social assessment requirements;

c) Provide qualified, experienced and competent professional engineers essential or desirable to address promptly any clarification related to the Services;

d) Provide a qualified and competent professional representative with experience in similar works, to coordinate the study intent;

e) Provide qualified and competent professionals of varying disciplines with experience in engineering and associated environmental aspects;

f) Attend and participate, lead as necessary, in all coordination meetings with Employer's Representative, and all stakeholders and other concerned agencies concerning the study related requirements of the Project;

g) Prepare and submit to the Employer all reports, including additional and modified, calculations or data (if any) which the Employer will require pursuant to the Conditions;

h) Without prejudice to the preceding provisions of this Clause, the Consultant shall from time to time, if requested by the Employer, provide any of the Varied Services Below:

Varied Services:

i) Specialist technical advice on any aspect of the Works which is not within the scope of Normal Services by the Consultant and not within the discipline of the Consultant's staff;

j) Investigation of the nature and strength of constructed or existing structures and, to that end, making model tests or special investigation;

k) Special tests advised by the Employer;

l) Any additional or varied services, other than Exceptional Services as provided in Sub-Clause 4.8 of Conditions, which the Employer may instruct the Consultant to perform.

COWI was subjected to 15%, instead of 2%, withholding tax for the services it rendered to Metro Pacific. Hence, the request for confirmation that COWI is subject to 2% withholding tax

on the ground that it is considered as a specialty contractor, pursuant to Section 2 of RR No. 11-2018 which specifically provides that:

> "Specialty Contractors - Those whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts."

In reply, please be informed that Section 3 of RR No. 6-2001, amending Section 2.57.2 (E) (3) of RR No. 2-98, defines the term "Specialty Contractor" as "(T)hose whose operations pertain to the performance of construction work requiring special skill and whose contracting business involves the use of specialized building trades or crafts". Gross payments to such persons are subject to creditable withholding tax at the rate of 2%.

In *BIR Ruling No. 006-03* dated *August 15, 2003*, this Office ruled that for purposes of withholding tax, Davis Langdon and Seah Philippines, ("DLS"), an independent firm of quantity surveyors, cost engineers and construction cost specialists, is considered a specialty contractor. DLS renders quantity surveying services in building and other civil works projects including, but not limited to, initial design, tendering procedures and contract arrangements, cost studies and planning, master development programming, tender contract analysis and report, construction progress financial statement preparation, advisory contract administration, valuation of construction work in progress and cost and material supervision in each and every work phase of construction, which services pertain to the performance of construction work requiring special skill. Notwithstanding the fact that DLS does not perform actual construction work, DLS is considered a specialty contractor, because its principal contracting business involves the use of specialized building trades or crafts. Accordingly, said ruling states that "as a specialty contractor, the professional fees that DLS receives for quantity surveying services are subject to creditable withholding tax at the rate of 2% effective October 1, 2001 (formerly 1%), in accordance with Section 3 of Rev. Regs. No. 6-2003, amending Section 2.57.2 (E) of Revenue Regulations No. 2-98."

The same ruling likewise cited the case of *Commissioner of Internal Revenue vs. The Court of Tax Appeals and Avecilla Building Corporation, 134 SCRA 49 (1985)*, wherein the Supreme Court ruled that a domestic corporation engaged in the business of "general engineering and contracting all kinds of constructions and structure; employing and contracting with architects, engineers, surveyors, chemists and other technical men, to perform engineering and architectural works, including the preparation of surveys, plans, specifications, estimates, etc. and to act as consulting and/or supervising engineers and architects, . . . in connection with the said contracting and building business" is considered a contractor under Section 191 of the Tax Code, which lists the persons subject to the then contractor's tax.

The previous aforementioned decision was also quoted in the case of *Hon. Efren I. Plana, in his capacity as Commissioner of Internal Revenue, petitioner, vs. Court of Tax Appeals and Engineering Development Corporation of the Philippines, G.R. No. L-52018, February 23, 1990*, which considers a corporation engaged in providing "general scientific, engineering and technological services in all the various branches thereof including but not limited to evaluation, appraisal, market studies, project reports, management, consultation, construction supervision, training and/or engagement in any work or plan", a specialty contractor. The Court stated that "it does not matter if no actual construction work was performed; what is important and determinative is that [the company] sold services, the exercise of which activity is a privilege taxable under the law."

Based on the foregoing, this Office hereby confirms your opinion that COWI is a specialty contractor since it is engaged in construction management, consultancy and general contracting services for private persons, establishment and government departments, and generally carrying any activities in conjunction with and related to any of the services above-mentioned. Accordingly,

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the professional fees that COWI receives as construction project specialist are subject to creditable withholding tax at the rate of 2% pursuant to Section 2.57.2 (E) (3) of RR No. 2-98, as amended by RR No. 6-2001.

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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