April 4, 2019

BIR RULING NO. 225-19

Section 22 (B) of the NIRC of 1997, as amended; RR No. 10-2012; BIR Ruling No. 263-2013

Tapales Prodon Wee-Toe Hio Cruz & Bolastig Law Offices
LG7 Cityland 10, Tower I,
H.V. Dela Costa cor. Valero Streets,
Salcedo Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 27, 2015 requesting on behalf of your clients, **Prescon Philippines, Inc. ("Prescon" for brevity), Leberman Realty Corporation ("Leberman" for brevity), and Aran Realty & Development Corporation ("Aran" for brevity)**, for confirmation on the tax treatment and attendant liability pertaining to the formation of a joint venture for the purpose of constructing a high-rise condominium building to be called Strata Gold Condominium ("JV Project").

Documents submitted disclosed that Leberman and Aran, which are both non-contractors, [1] are the owners of four (4) adjoining parcels of land along Ongpin Street, City of Manila, covered by Transfer Certificates of Title (TCT) Nos. 183574, 183575, 183576, and 183577; that on March 08, 2014, Leberman and Aran entered into a Joint Venture Agreement ("JVA") with Prescon for the development of the said properties by constructing thereon the JV Project; that under the JVA, Leberman and Aran shall contribute to the joint venture the said properties and Prescon shall finance and undertake to finance the construction of the building in accordance with the plans and specifications agreed upon by the parties; and that Prescon shall also shoulder all engineering fees and expenses, fees for professional services commissioned for the project, permits and authorizations which it shall secure.

In reply, please be informed that pursuant to Section 22 (B) of the National Internal Revenue Code (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*), associations, or insurance companies, but does not include general professional partnerships and a joint venture or consortium formed for the

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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.

Moreover, Section 3 of Revenue Regulations (RR) No. 10-2012 [2] dated June 01, 2012 states that:

> *"SECTION 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."*

Indubitably, to be a tax exempt Joint Venture undertaking a construction project, it must satisfy or meet all the above conditions. Thus, considering that Leberman and Aran are not engaged in construction business and have no Contractor's License issued by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI), the JVA dated March 08, 2014 entered into by and between Prescon, Leberman and Aran shall be considered as taxable corporation. It is subject to regular corporate income tax and other applicable internal revenue taxes imposed by the NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

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Footnotes

1. Based on the letter of BBB, the _____ of the Philippine Contractors Accreditation Board, dated November 17, 2014, addressed to CCC of Tapales Prodon Wee-Toe Hio & Cruz Law Offices.
2. Joint Venture or Consortium Formed for the Purpose of Undertaking Construction Projects and Mandatory Enrollment of Local Contractors in the Electronic Filing Payment System (EFPS).

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