REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 22 (B) of the NIRC; RR 14-02; RR 10-12.
BIR Ruling No. 013-18
JV-0225-2020
MAY 19 2020

CHINA GEO-ENGINEERING CORP./ESR CONSTRUCTION & DEVELOPMENT CORPORATION (JOINT VENTURE)
8F Unit 801-B, Biopolis Bldg., Diosdado Macapagal Blvd.
Pasay City, Metro Manila

Attention : **Mr. Cui Binhua**
Authorized Managing Officer

Gentlemen:

This refers to your letter dated September 9, 2019, requesting for a ruling that the joint venture between China Geo-Engineering (Phil.) Corporation and ESR Construction & Development Corporation formed for the purpose of undertaking the *Construction of PR-06, Alicia-Malangas Road, Zamboanga Sibugay, under ADB Loan No. : Improving Growth Corridors in Mindanao Road Sector Project (IGCMRSP), with Contract Identification No.* ("JV Project") is exempt from the two percent (2%) creditable withholding tax pursuant to Revenue Regulations (RR) No. 11-2018.

Documents submitted disclosed that China Geo-Engineering (Phil.) Corporation/ESR Construction & Development Corporation Joint Venture ("JV"), with Tax Identification Number (TIN) is an unincorporated joint venture formed to undertake the construction of the JV Project; that the JV is also registered with the Philippine Contractors Accreditation Board (PCAB) with Special Contractor's License No. originally issued on July 11, 2018; that on the other hand, China Geo-Engineering (Phil.) Corporation is registered with the BIR with TIN and is engaged in General Engineering, Road & Bridges; that it is also registered with the PCAB with Contractor's License No. originally issued on June 11, 2018; that ESR Construction & Development Corporation is registered with the BIR with TIN and is engaged in General Engineering; that it is also registered with the PCAB with Contractor's License No. originally issued on March 29, 1988; that the JV entered into a contract with the Government of the Republic of the Philippines through the Department of Public Works and Highways (DPWH) for the construction and completion of the afore-mentioned JV Project; and that the herein co-venturers have mutually agreed to contribute to the joint venture all the necessary capital equipment's technical personnel, management supervision, and other efforts and resources for the proper execution or implementation of the project and to extend to each other their respective fullest cooperation and best efforts towards profitable execution and success

of the project in accordance with approved plans and specifications to complete the same based on the approved work schedule; and that the co-venturers agreed that their respective proportionate share in the profits and losses of the Joint Venture shall be fifty five percent (55%) for China Geo-Engineering (Phil.) Corporation and forty five percent (45%) for ESR Construction & Development Corporation.

In reply, please be informed that pursuant to Section 22 (B) of the 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 2.57.5 of RR No. 2-98, as amended by RR 11-2018 dated January 31, 2018, 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;
>
> (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 share to the joint ventures profit."

Such being the case, China Geo-Engineering (Phil.) Corporation/ESR Construction & Development Corporation Joint Venture formed for the purpose of undertaking the *Construction of PR-06, Alicia-Malangas Road, Zamboanga Sibugay, under ADB Loan No. : Improving Growth Corridors in Mindanao Road Sector Project (IGCMRSP), with Contract Identification No.* , with the Department of Public Works and Highways 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 Tax Code of 1997, as amended.

Furthermore, the gross payments to the joint venture on the JV Project are likewise, not subject to the two percent (2%) creditable withholding tax 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 of RR No. 14-2002 dated September 9, 2002)

The herein joint venture, being exempt from corporate income tax, is not required to file quarterly and final adjustment returns but the co-venturers 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. 13-2018 dated January 10, 2018).*

It should be emphasized that the respective net income of the co-venturers derived from the joint venture project is subject to the creditable withholding tax imposed under Section 57 of the Tax Code of 1997, as amended, and implemented by RR 2-98, as amended. Thus, before China Geo-Engineering (Phil.) Corporation/ESR

Construction & Development Corporation 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 *(BIR Ruling No. 13-2018 dated January 10, 2018).*

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. (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 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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