July 4, 2019

BIR RULING NO. 374-19

Section 22 (B) of the National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 10-2012; BIR Ruling No. 1421-2018

Megawide Construction Corporation & UEM India Private Limited & Link Energie Industries Co., Inc. (In Consortium)
20 N. Domingo Street, Barangay Valencia,
Quezon City 1112

Attention: *AAA*

Gentlemen :

This refers to your request for a ruling that **Megawide Construction Corporation & UEM India Private Limited & Link Energie Industries Co., Inc. Consortium ("MUL Consortium")** qualifies as a non-taxable unincorporated joint venture ("JV") formed for the purpose of undertaking construction project, pursuant to Section 22 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Documents submitted disclosed that MUL Consortium was awarded on December 15, 2017 with the "Design and Construction of 88 MLD Las Piñas Water Reclamation Facility" ("the Project") under Contract No. WW-17-WRF-01 for Maynilad Water Services, Inc. The MUL Consortium, with Special Contractor's License Nos. SL1-SN-17204 dated May 09, 2018 valid until June 30, 2018 and SL1-SN-18099 dated October 24, 2018 valid until June 30, 2019, issued by the Philippine Contractors Accreditation Board (PCAB), is composed of three (3) corporations duly registered with the Securities and Exchange Commission (SEC), Bureau of Internal Revenue (BIR), and PCAB, namely:

1. Megawide Construction Corporation ("Megawide"), with Taxpayers Identification Number (TIN) 000-000-000-000, SEC Registration No. CS200411461, and PCAB Contractor's License Form No. 18-00030

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which was first issued on October 18, 2007;

2. UEM India Private Limited ("UEM India"), with TIN 000-000-000-000, SEC Registration No. FS201808740, and PCAB Special Contractor's License SL1-SN-18100 which was first issued on October 24, 2018; and

3. Link Energie Industries Co., Inc. ("Link Energie"), with TIN 000-000-000-000, SEC Registration No. CS200260526, and PCAB Contractor's License Form No. 18-06598 which was first issued on December 07, 2006.

The herein co-venturers have mutually agreed that the scope of work and responsibilities of each co-venturer for the Project are as follows:

Party	Brief Description of Scope of Work	Value of Work of Respective Party in terms of % to the Total Contract/Bid Value (USD)
Megawide	1. Overall Contract Management as Lead Partner 2. Civil Work	39.93%
UEM India	1. Process Design 2. Supply of Offshore Equipment 3. Commissioning	37.85%
Link Energie	1. Installation and Commissioning 2. Part of Civil Work 3. Part of Supply of Equipment 4. Commissioning	22.22%

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:*

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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 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

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(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, the MUL Consortium formed for the purpose of undertaking the "Design and Construction of 88 MLD Las Piñas Water Reclamation Facility" under Contract No. WW-17-WRF-01 for Maynilad Water Services, Inc. is not taxable as a corporation for complying with the conditions provided in RR No. 10-2012, *i.e.*, (1) the MUL Consortium is for the undertaking of construction project; (2) the MUL Consortium 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 MUL Consortium 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 MUL Consortium on the 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 MUL Consortium 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

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project. [1]

It should be emphasized that the respective net income of the co-venturers derived from the MUL Consortium 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 MUL Consortium 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. [2]

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

1. BIR Ruling No. 1421-2018 dated December 07, 2018.
2. Section 4 of RR No. 10-2012.

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