September 6, 2019

BIR RULING NO. 503-19

Sec. 22 (B) NIRC; RR 14-02; RR 10-12; BIR Ruling No. 1421-18; BIR Ruling No. 1243-18; BIR Ruling No. 1244-18

R.D. Policarpio & Co., Inc.
and Livan Trade Corporation
(Joint Venture)
#544 Melania St., Samsonville Subd., Dau
Mabalacat City, Province of Pampanga 2010

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 8, 2019 requesting for a ruling that the joint venture between R.D. Policarpio and Co., Inc. ("RDPCI") and Livan Trade Corporation ("Livan") for the purpose of pre-qualifying for the Construction of the Terrestrial of the Cable Network Corridor for the Luzon Bypass Infrastructure Project, Segment A — Aurora to Pangasinan and Segment B — La Union to Pangasinan is exempt from the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) No. 14-02.

Documents submitted disclosed that R.D. Policarpio & Co., Inc./Livan Trade Corporation Joint Venture ("JV"), with TIN No. 000-000-000-000, is an unincorporated joint venture formed to undertake the pre-qualification for the Construction of the Terrestrial of the Cable Network Corridor for the Luzon Bypass Infrastructure Project, Segment A — Aurora to Pangasinan and Segment B — La Union to Pangasinan ("JV Project"); that the JV is also registered with the Philippine Contractors Accreditation Board (PCAB) with Special Contractor's License Nos. SL1-SN-17616 and SL1-SN-17617, both issued on July 16, 2018; that on the other hand, R.D. Policarpio & Co., Inc. is registered with the BIR with TIN No. 000-000-000-000 and is engaged in the business of building of constructions or parts and civil engineering; that it is also registered with the PCAB with Contractor's License Form No. 04859 originally issued on August 10, 1978; that Livan is likewise registered with the BIR with TIN No. 000-000-000-000 and is engaged in the business of wholesaling; that it is also registered with the PCAB with Contractor's License Form No. 08469 originally issued

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on December 11, 2009; that the JV Project is being contracted in favor of the Bases Conversion & Development Authority (BCDA); that the herein co-venturers have mutually agreed to contribute to the joint venture, all the necessary capital equipment, technical personnel, management supervision, and other efforts and resources for the proper implementation of the project and to extend to each other their respective fullest cooperation and best efforts towards profitable construction 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 70% for R.D. Policarpio & Co., Inc. and 30% for Livan Trade 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.

Further, Section 3 of RR No. 10-2012 dated June 1, 2012 provides, to wit:

"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).

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 Tending Agency (government office) that the project is a foreign financed/internationally-funded project and that international bidding is allowed under

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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.

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 herein JV formed for the purpose of pre-qualification and implementation of the Construction of the Terrestrial of the Cable Network Corridor for the Luzon Bypass Infrastructure Project, Segment A — Aurora to Pangasinan and Segment B — La Union to Pangasinan with BCDA as the implementing agency, is considered as a joint venture not taxable as a corporation for complying with the conditions provided in RR 10-2012, *i.e., (1) the JV is for the undertaking of construction project; (2) the JV should involve 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 must likewise be 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 Nos. 475-14 dated December 26, 2014 and 1421-18 dated December 7, 2018)*

Furthermore, 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.

The herein joint venture being exempt from corporate income tax is not required to file quarterly and final adjustment returns. *(BIR Ruling No. 1244-18 dated October 12, 2018)*

However, 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. 1243-18 dated October 12, 2018)*

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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 R.D. Policarpio & Co., Inc./Livan Trade 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.

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,

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

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