December 11, 2019

BIR RULING NO. 783-19

Sec. 22 (B) of the NIRC; RR 14-02; RR 10-12; BIR Ruling No. 13-2018

E.M. Cuerpo, Inc./J.D. Legaspi Construction (Joint Venture)
Room 211 Paradigm Bldg., M.H. Del Pilar St.
Brgy. San Antonio, Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 18, 2019, requesting for a ruling that the joint venture between E.M. Cuerpo, Inc., and J.D. Legaspi Construction formed for the purpose of undertaking the *Construction of Passenger Terminal Building, Runway Completion and Other Site Development Works for the Bicol International Airport Development Project Package 2B (Re-Bid)* ("JV Project") is exempt from the two percent (2%) creditable withholding tax pursuant to Revenue Regulations (RR) No. 14-2002.

Documents submitted disclosed that E.M. Cuerpo, Inc./J.D. Legaspi Construction Joint Venture ("JV"), with Tax Identification Number (TIN) 000-000-000-000 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. JV-16-432 originally issued on November 8, 2016; that on the other hand, E.M. Cuerpo, Inc. is registered with the BIR with TIN 000-000-000-000 and is engaged in General Engineering, Foundation Work, Structural Steel Work, Plumbing and Sanitary Work, Electrical Work, Mechanical Work, Air-conditioning and Refrigeration Work, Elevator and Escalator, Fire Protection Work, Waterproofing Work, Painting Work, Structural Demolition and Landscaping; that it is also registered with the PCAB with Contractor's License No. 30963 originally issued on June 26, 2003; that J.D. Legaspi Construction is registered with the BIR with TIN 000-000-000-000 and is engaged in General Engineering, Plumbing and Work, Electrical Work, Mechanical Work, Fire Protection Work and Landscaping; that it is also registered with the PCAB with Contractor's License No. 9608 originally issued on June 11, 1987; that the JV entered into a contract with the Government of the Republic of the Philippines through the Department of Transportation (DOTr) for the construction and completion of the afore-mentioned JV Project; and that the herein co-venturers have mutually agreed to

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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 one percent (51%) for E.M. Cuerpo, Inc., and forty nine percent (49%) for J.D. Legaspi Construction.

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 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.

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

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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, E.M. Cuerpo, Inc./J.D. Legaspi Construction Joint Venture formed for the purpose of undertaking the *Construction of Passenger Terminal Building, Runway Completion and Other Site Development Works for the Bicol International Airport Development Project Package 2B (Re-Bid)*, with the Department of Transportation 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 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 E.M. Cuerpo, Inc./J.D. Legaspi Construction 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)

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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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