REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 22 (B) NIRC
RR 14-02; RR 10-12
BIR Ruling No. 176-14
#370-2017

8-9-2017

Pulsar Construction/Advanced Foundation Construction Systems Corporation- Joint Venture
Pulsar Complex, Alimanao Hills
Penablanca, Cagayan

Attention: **Joseph L. Lara**
Authorized Managing Officer

Gentlemen:

This refers to your letter dated August 26, 2015 requesting for a Certificate of Tax Exemption for the Joint Venture formed between Pulsar Construction and Advanced Foundation Construction Systems Corp. (the "Joint Venture") for the purpose of undertaking the project: MFO 1- National Road Network Services: Construction and Maintenance of Bridges along National Roads: Replacement of Permanent Weak Bridges- Guiddam Bridge along Manila North Road (the "JV Project").

Documents submitted disclosed that the Joint Venture (TIN:), is an unincorporated joint venture formed to undertake the pre-qualification and construction of the JV Project; that the Joint Venture has been duly registered with the Philippine Contractors Accreditation Board (PCAB) under Special Contractor's License No. first issued on February 3, 2015; that the parties to the Joint Venture, Pulsar Construction (TIN:) and Advanced Foundation Construction Systems Corp. (TIN: . are both local contractors duly registered with the PCAB under PCAB License Nos. and , respectively; that on March 27, 2015, the Joint Venture entered into a Contract Agreement with the Government of the Republic of the Philippines thru the Department of Public Works and Highways (DPWH) wherein the Joint Venture committed to undertake the JV Project for a consideration of Pesos and 90/100 and that the parties to the Joint Venture agreed that their respective proportionate share in the profits and losses of the Joint Venture shall be 51% for Advanced Foundation Construction Systems Corp. and for Pulsar 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 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.

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; 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 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.*
>
> *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."*

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Such being the case, the Joint Venture formed by Pulsar Construction and Advanced Foundation Construction Systems Corp. for the purpose of undertaking the project: MFO 1- National Road Network Services: Construction and Maintenance of Bridges along National Roads: Replacement of Permanent Weak Bridges-Guiddam Bridge ( ) along Manila North Road is considered a joint venture not taxable as a corporation for having complied with the conditions provided under 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. (*BIR Ruling No. 176-14 dated June 9, 2014*)

Furthermore, the gross corporate payments to the Joint Venture are not likewise subject to the 2% creditable withholding tax prescribed under Section 57 (B) of the same Code, as implemented by RR 2-98, as amended by RR No. 14-2002. (Section 4 (B) (5) 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.

However, Pulsar Construction and Advanced Foundation Construction Systems Corp., as parties to the Joint Venture, are separately subject to the regular corporate income tax imposed under Sections 24(A) and 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. 176-14 dated June 9, 2014*).

It should be emphasized that the respective net income of the co-venturers derived from the JV 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 the Joint Venture distributes the net income to Pulsar Construction and Advanced Foundation Construction Systems Corp., pursuant to their agreed profits/income sharing, it shall withhold the tax based on the net income of its co-venturers. (*BIR Ruling No. 176-14 dated June 9, 2014*)

Finally, Pulsar Construction and Advanced Foundation Construction Systems Corp. 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 ascertained that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

Caesar Dulay

CAESAR R. DULAY
Commissioner of Internal Revenue

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