REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 22(B) and 114 NIRC:
Revenue Regulations No. 14-02 Revenue Regulations No. 10-12
BIR Ruling No. 176-14: BIR Ruling No. 475-14
#378-2017 8/15/2017

ILSUNG CONSTRUCTION CO., LTD./
PACIFIC CONCRETE PRODUCTS, INC. (JV)
15 West Avenue, Barangay Nayong Kanluran,
Quezon City

Attention: **Conrado M. Briones**
Attorney-at-Law

Gentlemen:

This refers to your letter dated January 3, 2017 requesting for a ruling that the joint venture between Ilsung Construction Co., Ltd. ("Ilsung") and Pacific Concrete Products, Inc. ("Pacific") for the exclusive purpose of pre-qualifying, participating and actually undertaking the construction of *JICA Assisted Central Luzon Link Expressway (CLLEX) Project, Phase 1: Package 3-Aliaga Section*, is exempt from income tax and consequently, not subject to the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) Nos. 014-02 and 10-12.

Documents submitted disclosed that Ilsung Construction Co., Ltd. with BIR Certificate of Registration No. and with TIN: , is a foreign company organized and existing under the laws of Korea and is registered with the Securities and Exchange Commission with Company Registration No. and, that it is also registered with the Philippine Contractors Accreditation Board (PCAB) with Special Contractor's License on the other hand. Pacific Concrete Products, Inc. with the BIR Certificate of Registration No. and with TIN: is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission with SEC Registration No. and that it is also registered with the PCAB with Contractor's License Form No. issued on November 11, 1993; that on October 18, 2016, the JV entered into a contract with the Department of Public Works and Highways (DPWH) for the implementation and construction of the afore-mentioned JV Project; that the JV is registered with the BIR with Certificate of Registration and with TIN: ; that the JV is also registered with

the PCAB with Special Contractor's License SL1-SN-12320; and that the herein co-venturers have agreed that their respective proportionate shares in the profits and loss of the joint venture shall be seventy two percent (72%) for Ilsung Construction Co., Ltd. and twenty eight percent (28%) for Pacific Concrete Products, Inc.

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:

> "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 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."

Such being the case, Ilsung Construction Co., Ltd./Pacific Concrete Products, Inc. Joint Venture formed for the purpose of construction of the JICA Assisted Central Luzon Link Expressway (CLLEX) Project, Phase 1; Package 3-Aliaga Section, with the DPWH 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 a construction project; (2) the JV should involve joining or pooling of resources by licensed local contractors (licensed as general contractor by the (PCAB) or in case of foreign contractor (covered by a special license as 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, and consequently, to the 2% CWT 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)*

However, the DPWH, as a government withholding agent, should deduct and withhold a final value-added tax at the rate of five percent (5%) of its gross payment to the joint venture pursuant to Section 114(C) of the Tax Code of 1997, as amended.

The herein joint venture 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 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. 475-14 dated November 26, 2014)*.

Considering that Ilsung Construction Co., Ltd./Pacific Concrete Products, Inc. Joint Venture is not embraced within the meaning of the term "corporation", it is not subject to the corporate income tax imposed under Section 27(A) of the Tax Code of 1997, as amended. However, the co-venturers, upon filing their respective income tax returns, shall include the net revenue derived from the above-mentioned joint venture project as an item of their gross income.

#378-2017
8/15/2017

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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