REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 22 (B) of the National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 10-2012
BIR Ruling No. 148-2018
~~0707-2019~~

NOV 29 2019

C.B. GARAY PHILWIDE BUILDERS/
G.G. UY CONSTRUCTION/
COCO TECHNOLOGIES CORPORATION
JOINT VENTURE
102 Ligaya Street, 7th Avenue, Brgy. 122 Zone 11,
Grace Park East, Caloocan City 1400

Attention: ENGR. GAUDENCIO G. UY
Authorized Managing Officer

Gentlemen:

This refers to your letter dated October 28, 2016, requesting for a ruling that the joint venture between C.B. Garay Philwide Builders, G.G. Uy Construction, and Coco Technologies Corporation for the purpose of undertaking the *"Raising/Strengthening of Polder Dike (Slope Protection Works at Polder Dike Using Bio-Engineering: Phase 2), Navotas City : Sta. 0+052.28 to Sta. 0+625.11, Malabon City : Sta. 0+000 to Sta. 0+780"* ("JV Project"), is exempt from the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) No. 14-2002.

Documents submitted disclosed that C.B. Garay Philwide Builders, G.G. Uy Construction, and Coco Technologies Corporation Joint Venture ("JV"), with Taxpayers Identification Number (TIN) is an unincorporated joint venture formed to undertake the construction of the JV Project; that the JV entered into a contract dated January 27, 2016 with the Government of the Republic of the Philippines through the Department of Public Works and Highways (DPWH) for the construction and completion of the afore-mentioned JV Project; that the JV, with Special Contractor's License No. which was first issued on July 23, 2015 by the Philippine Contractors Accreditation Board (PCAB), is composed of the following:

1. C.B. Garay Philwide Builders, a sole proprietorship with TIN Certificate of Business Registration No. issued by the Department of Trade and Industry (DTI), and PCAB Contractor's License Form No. which was first issued on December 15, 1980;

2. G.G. Uy Construction, a sole proprietorship with TIN Certificate of Business Registration No. issued by the DTI, and PCAB Contractor's License Form No. which was first issued on August 25, 2006; and

3. Coco Technologies Corporation, a domestic corporation with TIN , Company Registration No. issued by the Securities and Exchange Commission (SEC), and PCAB Contractor's License Form No. which was first issued on December 12, 2011.

and that the herein co-venturers have mutually agreed to contribute to the JV as follows: 36% for C.B. Garay Philwide Builders, 34% for G.G. Uy Construction, and 30% for Coco Technologies Corporation, and the resources for the proper execution or implementation of the

JV Project and further bind themselves at all times during the existence of the JV to extend to each other their respective fullest cooperation and best efforts towards profitable construction of the JV Project in accordance with approved plans and specifications and to complete the same within the approved work schedule.

In reply, please be informed that pursuant to Section 22 (B) of the National Internal Revenue 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 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.

Moreover, Section 3 of RR No. 10-2012 dated June 1, 2012, implementing Section 22 (B) of the National Internal Revenue Code 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*
>
> *(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*
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> *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, C.B. Garay Philwide Builders, G.G. Uy Construction, and Coco Technologies Corporation Joint Venture formed for the purpose of undertaking the "Raising/Strengthening of Polder Dike (Slope Protection Works at Polder Dike Using Bio-Engineering: Phase 2), Navotas City : Sta. 0+052.28 to Sta. 0+625.11, Malabon City : Sta.

0+000 to Sta. 0+780" with the DPWH 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 National Internal Revenue Code of 1997, as amended.

Moreover, the gross payments to the JV on the JV Project are likewise not subject to the 2% CWT prescribed under Section 57 (B) of the same Code, as implemented by RR No. 2-98, as amended by RR No. 14-2002[1]. Also, the herein JV 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 National Internal Revenue Code of 1997, as amended, on their taxable income during each taxable year respectively derived by them from the aforesaid construction project[2].

It should be emphasized that the respective net income of the co-venturers derived from the JV Project is subject to the CWT imposed under Section 57 of the National Internal Revenue Code of 1997, as amended, as implemented by RR No. 2-98, as amended. Thus, before C.B. Garay Philwide Builders, G.G. Uy Construction, and Coco Technologies Corporation Joint Venture distributes the net income of the co-venturers, pursuant to their co-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.[3]

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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[1] Section 4 (B) (5) of RR No. 14-2002 dated September 9, 2002.
[2] BIR Ruling No. 148-2018 dated February 13, 2018.
[3] Section 4 of RR No. 10-2012.