REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 43, Tax Code of 1997, as amended	000-00 416-2022	

Person to Contact: Chief, Law & Legislative Division
Tel Nos. 926-55-36/927-09-63

Date: OCT 12 2022

SyCip Gorres Velayo & Co.
6760 Ayala Avenue
1226 Makati City

Attention: **Atty. Cheryl Edeline C. Ong, CPA**
Partner, Tax Services

Gentlemen:

This refers to your request on behalf of your client, **CBK Power Company Limited** ("CBK" or "the Partnership") for confirmation of your opinion that CBK may change its method/period of amortization of the past service pension cost in order to spread the unamortized portion of CBK's contributions to the Retirement Plan not previously deducted from its gross income in any prior taxable years over the remaining period of its concession agreement with National Power Corporation (NPC).

Background

CBK is a partnership duly organized and existing under the laws of the Republic of the Philippines. CBK is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance and ownership of the Kalayaan II pumped-storage hydroelectric power plant, the New Caliraya Spillway and other assets to be located in the Province of Laguna, and (b) the rehabilitation, upgrade expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna (the"Project"). The activities of the partnership shall include generally the entering into, carrying out and performing of the agreements (including financing agreements) to which it is a party, undertaking all other activities identified as necessary or desirable to implement the Project and undertaking any activities incidental to any of the foregoing.

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In 1998, NPC, a Philippine government owned and controlled corporation, and Industries Metalurgicas Pescarmona, S.A. (IMPSA), a corporation duly organized and existing under the laws of Argentina, entered into a concession agreement for the rehabilitation, construction and subsequent operation of the hydroelectric power plant complex in Caliraya, Botocan and Kalayaan in Laguna known as the CBK Complex ("the CBK Project"). The concession has a term of twenty-five (25) years, to commence from turnover date and will terminate on February 2026.

To carry out the CBK Project, CBK was established and registered with the Securities and Exchange Commission (SEC) on March 15, 2000 as a limited partnership. On February 7, 2001, NPC formally turned over the CBK Complex to the Partnership for the start of the rehabilitation and construction of the CBK Complex.

CBK established and maintains a retirement plan known as the CBK Power Company Limited Employees' Retirement Plan ("the Plan") which took effect on January 1, 2006. CBK contributes to a Trust Fund, the income of which is used to provide for the payment of retirement, death, disability and separation benefits to eligible members or their beneficiaries, as the case may be, subject to certain conditions and limitations as set forth in the plan. The Plan was amended effective December 1, 2013.

On January 14, 2015, the Bureau of Internal Revenue (BIR) ruled that the amendments made in December 1, 2013 are not prejudicial to the employee-members; and will not affect the Plan's qualification under Section 32(B)(6)(a) of the National Internal Revenue Code (Tax Code) of 1997, as amended.

The Plan requires contributions to be made to a separately administered fund. CBK has made the following contributions for the prior years, to wit:

Year	Amount of Contribution
2009	
2010	
2011	
2012	
2014	
2015	
2016	
2017	
2018	
2019	

Currently, CBK is amortizing its past service cost (PSC) using ***Straight Line** method* over a period of 10 years.[1]

Year	Amount Contributed to the Fund	Current Service Cost	Past Service Cost	Annual Amortization
2009				
2010				
2011				
2012			0.00	0.00
2014				
2015				
2016				
2017				
2018				
2019*				

*The amount of contribution and current service cost are based on 2018 actuarial valuations.

As the concession agreement ends on February 7, 2026, amortizing the PSC over a period of ten (10) years would leave an unamortized PSC balance as of end of concession period arising from contributions in 2017 and 2018 onwards.

For January 2019 until February 7, 2026, the remaining unamortized PSC should be amortized evenly over 85.25 months to cover the actual remaining term of concession agreement.

	Number of Months
2019-2025 (Jan. 1 to Dec. 31)	84.00
2026 (Jan. 1 to Feb. 7)	1.25
Total Months	**85.25**

Based on the foregoing, you now seek confirmation of your opinion that CBK can change its method/period of amortization of the PSC in 2017 and 2018, and for contributions in 2019 and subsequent years to amortize PSC over the remaining concession period.[2]

In reply thereto, please be informed that Section 43 of the Tax Code of 1997, as amended, provides that the taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer.

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[1] See Annex "A" for the detailed current PSC amortization schedule

[2] See Annex "A" for the proposed PSC schedule

In relation thereto, Section 38 of Revenue Regulations (RR) No. 2, otherwise known as the Income Tax Regulations states, in part —

> *"**Section 38.** Bases of Computation. — Approved standard methods of accounting will be ordinarily regarded as clearly reflecting income. A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency. All items of gross income shall be included in the gross income for the taxable year in which they are received by the taxpayer and deductions taken accordingly, unless in order clearly to reflect income such amounts are to be properly accounted for as of a different period. . . . "*

Based on the foregoing, the general rule is that a taxpayer is allowed to report income and expenses in accordance with the method of accounting employed, provided such method conforms with generally accepted accounting principles. Said method of accounting comprises a set of rules for determining when and how to report income and deduction.[3]

However, the change of accounting method from one system to another is allowed under Section 168 of RR No. 2, which provides as follows:

> *"**Section 168.** Changes in accounting methods. — The true income, computed under the law, shall in all cases be entered in the return. If, for any reason, the basis of reporting income subject to tax is changed, the taxpayer shall attach to his return a separate statement setting forth for the taxable year and for the preceding year the classes of items differently treated under the two systems, specifying in particular all amounts duplicated or entirely omitted as the result of such change.*
>
> ***A taxpayer who changes the method of accounting employed** in keeping his book **shall**, before computing his income upon such new method for purposes of taxation, **secure the consent of the Commissioner of Internal Revenue**. For the purposes of this section, a change in the method of accounting employed in keeping books means any change in the accounting treatment of items of income or deductions, . . . Application for permission to change the method of accounting employed and the basis upon which the return is made shall be filed within 90 days after the beginning of the taxable year to be covered by the return. The application shall be accompanied by a statement specifying all amounts which would be duplicated or entirely omitted as a result of the proposed change. Permission to change the method of accounting will not be granted unless the taxpayer and the Commissioner of Internal Revenue agree to the terms and conditions under which the change will be effected." (Emphasis supplied.)*

[3] Consolidated Mines, Inc. vs. Court of Tax Appeals, L-18843, August 29, 1974

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IN VIEW OF THE FOREGOING, CBK is hereby granted permission to change its method of amortization of the past service pension cost in order to spread the unamortized portion of CBK's contributions to the Retirement Plan not previously deducted from its gross income in any prior taxable years over the remaining period of the concession arrangement.

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 null and void.

Very truly yours,

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

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