REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

2013 Revised NEDA Joint Venture Guidelines	
BIR Ruling No. 014-2022	
VAT Ruling No. 030-03	
OT-276-022	
JUN 01 2022	

APO-UGEC Security Printing Joint Venture
LIMA Technology Center
Lot 3, Blk 16, A. Mabini St.
Malvar, Batangas

Attention: **Mr. Michael Dalumpines**
President and Chairman of the Board
APO Production Unit, Inc

Henry P. Cureg
President and Chairman of the Board
United Graphic Expression Corp

Gentlemen:

This refers to your request for reconsideration of BIR Ruling No. 014-2022 dated January 17, 2022, wherein this Office denied APO-UGEC Security Printing Joint Venture's (the "Joint Venture") requests to allow it to (1) use the tax credits as evidenced by the creditable withholding tax (CWT) certificates issued in the name of APO Production Unit, Inc. ("APO") and (2) benefit from allowing the deduction of the input value-added tax (VAT) expense or the charging against cost of the unrecoverable input tax relating to government transactions.

It is represented that on November 27, 2014, APO and United Graphic Expression Corporation (UGEC) signed a Joint Venture (JV) Agreement and formed an unincorporated or contractual joint venture following the procedures laid out in the Revised Guidelines and Procedures for Entering into Joint Venture Agreements between Government and Private Entities issued by the National Economic and Development Authority in 2013 (NEDA JV Guidelines). The Joint Venture was formed for the twin purpose of upgrading APO's security printing plant in LIMA Technology Center, Batangas and of operating the same as a going business concern. The Joint Venture has been duly approved by NEDA and is registered as a taxpayer in LIMA Technology Center, Lipa, Batangas, with Taxpayer Identification No.

Under the JV Agreement, APO shall promote the Joint Venture and offer its services to clients from the government sector such as the Department of Foreign Affairs (E-Passport-SLA, VIS. . Stickers with Hologram and E-Passport), Department of Budget and Management (Passport Capturing Machine), Department of Trade and Industry (ICC Stickers), Land Transportation Office (for LTO Validation Stickers) and the Overseas Workers Welfare Administration (E-Cards)[1]. When dealing with government clients, the APO discloses that it is part of the Joint Venture and the performance of its services is made pursuant to and is part of its obligations as a member of the Joint Venture.

Accordingly when APO receives payments from government clients for sales made on behalf of the Joint Venture, it immediately remits the same to the latter for proper recording. Consequently, such payments shall be recorded in the Joint Venture's books as revenues and shall be included in the computation of its gross income for proper matching of revenues and costs in accordance with Philippine Accounting Standards. The income tax thereof shall be paid by the Joint Venture.

In respect of VAT, it is represented that UGEC procures raw materials, sells the same to the Joint Venture at cost, withholds taxes from payments made to suppliers, and pays the corresponding VAT on the sale for such raw materials. The Joint Venture then purchases raw materials from UGEC at cost; claims the resulting input tax credits, and withholds taxes from payments made to UGEC on these transactions. Moreover, APO issues VAT invoices for sales to government clients that prefer to deal only with APO. That being said, inasmuch as APO made the sales pursuant to its obligations under the JVA and the expenses in connection with these sales were incurred by the Joint Venture and not by APO, the sales are recorded in the books of the Joint Venture and the VAT is paid by the Joint Venture.

In reply, please be informed that the NEDA JV Guidelines defined a contractual JV as a legal and binding agreement under which the JV Partners shall perform the primary functions and obligations under the JV Agreement without forming a JV Company. The JV Partners in this case can stipulate their relationship, their respective rights and obligations and other provisions that they may deem fit in the JV Agreement. In this case, the law on contracts shall govern the contractual JV. Thus, contractual JV does not have a legal personality separate from the JV Partners since the Partners are the ones who are performing the obligations and functions of the JV.

In applying the concept of contractual JVs, the activities performed by APO and UGEC pursuant to the JV Agreement shall be attributed to the Joint Venture that they formed. The JV Agreement executed was designed in such a way that APO is the JV party performing the sales and marketing of the Joint Venture and all the printing services for government clients although it is the Joint Venture that records the sale and is liable to the BIR. In other words, for all legal intents and purposes, the Joint Venture is the payee of the amounts received by APO from its government clients pursuant to the JV Agreement.

In this regard and as will be discussed below, this Office is of the view that the Joint Venture may claim the unutilized CWT certificates in APO's name as tax credits and may

[1] Per Affidavit dated 8 April 2022, of Mr. Michael J. Dalumpines, Chairman and President of APO

deduct the unrecoverable input VAT expense or the charging against cost of the input VAT relating to government transactions

Creditable Withholding Tax

Based on the documents presented, the fact of withholding was established as evidenced by the Certificates of CWT at Source (BIR Form No. 2307). Also, it is undisputed that the Joint Venture recorded the amount remitted by APO in its books as revenues and the income it received thereof was declared part of its gross income.

It also bears stressing that the payments which APO receives from its government clients are actually payments for the services rendered by the JV, and APO is merely performing its obligations pursuant to the JV Agreement. This is shown by the fact that collections from government clients are immediately remitted to the Joint Venture. Likewise, APO did not utilize the tax credits related to the transactions it entered into as a member of the Joint Venture. The attached Affidavit dated April 8, 2022 of Mr. Michael J. Dalumpines. Chairman and President of APO, fully supports this fact when he stated that:

> *"4. While APO receives payments from the government clients for sales made on behalf of the Joint Venture ("Sales"), APO remits the same payments to the Joint Venture and consequently, the Sales are recorded as income in the Joint Venture's books for proper matching of revenue and costs in accordance with the Philippine Accounting Standards.*
>
> *xxx xxx xxx*
>
> *6. The certificates of creditable withholding taxes (CWT) issued to APO have not been claimed and/or applied by APO against its income tax payable."*

The above statements are clear recognition on the part of APO that it is not the taxpayer who is entitled to use and claim as credit the unutilized CWT.

Thus, while the payee in said CWT Certificates is APO, the latter merely acted on behalf of the Joint Venture on the transactions subject of the CWT Certificates. It is actually the Joint Venture that is the ultimate beneficiary of the CWT Certificates. This explanation can be based on the doctrine that substance prevails over form such that in a conflict between form and substance, the former must necessarily yield to the latter. Tax laws concern itself more on the substance rather than the form[2].

The present situation is no different from that in *Collector of Internal Revenue vs. Batangas Transportation Company* (GR No. L-9692, January 6, 1958). In that case, the Supreme Court impliedly allowed the joint venture to credit the income taxes paid by the two (2) bus companies, which were deemed to have formed an unincorporated joint venture, against the income tax payable of the joint venture when the Supreme Court upheld the assessment of the Collector of Internal Revenue.

[2] VAT Ruling No. 030-03 dated June 23, 2003

Based on th above-discussions, this Office believes and, thus, holds that the Joint Venture may use the tax credits evidenced by the CWTs Certificates issued in the name of APO. However, the ax credits to be applied by the Joint Venture shall be limited to the total amount withheld as duly supported by certificates of creditable withholding tax.

Input VAT

With regard to the input VAT, 5% final VAT is withheld on payments made by government clients to APO. This is in accordance with Section 114 (C) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 13-2018, to wit:

> *"SEC. 4.114-2 Withholding of VAT on Government Money Payments and Payments to Non-Residents. —*
>
> *(a) Withholding of Value-Added Tax. — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: provided, that beginning January 1, 2021, the VAT withholding system under this subsection shall shift from final to a creditable system: xxx xxx xxx"*
>
> *"The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost."*

The input taxes corresponding to these transactions are of no use to APO because it is the Joint Venture that incurs the costs and purchases raw materials for these sales. Inasmuch as the sales of APO to government clients of the Joint Venture are actually the sales of the Joint Venture, then, it follows that the costs incurred for such sales are likewise the costs of the Joint Venture. Again, as stated by the Chairman and President of APO in his Affidavit dated 8 April 2022, "*while APO issued Value Added Tax (VAT) invoices to the government clients for the Sales, the VAT is paid by the Joint Venture and not by APO*", and that, "*the certificates of the 5% final withholding VAT have not been claimed and/or applied by APO.*"

Further, the output VAT for the sales and the input VAT for the costs of such sales are for the account of the Joint Venture. Therefore, and following the rationale in the aforementioned case of *Collector of Internal Revenue vs. Batangas Transportation Company*, this Office is of the considered view that the Joint Venture may benefit from the deduction of the input VAT expense or the charging against the cost of the input VAT in accordance with Section 114 (C) of RR No. 16-2005, as amended, provided, however, that the input tax shall be restricted to the total amount as duly supported by appropriate sales invoices/official receipts.

Finally, it is understood that the certificates of CWT and the input VAT must not have been claimed and/or applied by APO against its income tax and VAT liabilities/payables.

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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