REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

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| Sec. 22 (B) of the Tax Code of 1997, as amended; RR No. 02-98, as amended; and RR No. 10-12 |
| ~~BIR Ruling No. 013-2018~~ JV- 418-2022 |
| OCT 12 2022 |

**Netpac-Comclark-Trends & Technologies - Joint Venture**
Manuel Roxas Ave., Clark Freeport
and Special Economic Zone

Attention: **Cecil Garcia**
*Managing Officer*

Gentlemen:

This refers to your request for a ruling that the joint venture between Net Pacific, Inc., Comclark Network and Technology Corp. and Trends & Technologies, Inc. (JV) formed for the purpose of undertaking the Contract for the construction of Bases and Convention Development Authority (BCDA)'s Design, Build and Establishment of the National Fiber Backbone Project Phase 1 ("JV Project") is exempt from the two percent (2%) creditable withholding (CWT) tax pursuant to Revenue Regulations (RR) No. 02-98, as amended.

Documents submitted disclosed that the JV, with Philippine Contractors Accreditation Board (PCAB) Special Contractor's License (CL) No. originally issued on March 11, 2021, is an unincorporated joint venture formed to undertake the construction of the JV Project; that on the other hand, Net Pacific, Inc., with PCAB CL No. originally issued on January 28, 2003, is engaged in construction contracting business in the country with communication facilities; that Comclark Network and Technology Corp., with PCAB CL No. originally issued on July 11, 2020 is also engaged in construction contracting business in the country with communication facilities; that Trends & Technologies, Inc., with PCAB CL No. originally issued on September 30, 2015, is also engaged in construction contracting business in the country with communication facilities; that the JV entered into a contract with the BCDA, a government instrumentality vested with corporate powers, duly organized and existing pursuant to Republic Act No. 7227 for the construction of BCDA's Design, Build and Establishment of the National Fiber Backbone Project Phase 1; and that the herein co-venturers have mutually agreed to pool their financial, equipment, and technical resources necessary for the proper execution, implementation, and completion of the abovementioned JV project.

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

As provided in Section 2.57.5 of RR No. 2-98, as amended, the withholding of CWT shall not apply to income payments made to joint ventures or construction formed for the purposes abovementioned. However, Section 3 of RR No. 10-2012, dated June 1, 2012, provides for the qualifications to be considered as non-taxable Joint Venture, such as, *(1) it is formed for the undertaking of a construction project; (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).*

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. Provided, 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. Provided finally, that 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.

Perforce, Netpac-Comclark-Trends & Technologies - Joint Venture formed for the purpose of undertaking the Contract for the construction of BCDA's Design, Build and Establishment of the National Fiber Backbone Project Phase 1 with the BCDA is considered as a joint venture not taxable as a corporation for complying with the conditions provided in RR No. 10-2012. Furthermore, 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. (Section 4 of RR No. 14-2002 dated September 9, 2002)

Accordingly, the herein joint venture, being exempt from corporate income tax, is not required to file quarterly and final adjustment returns but 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. 13-2018 dated January 10, 2018).

Moreover, 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 Tax Code of 1997, as amended, and implemented by RR No. 2-98, as amended. Thus, before Netpac-Comclark-Trends & Technologies - Joint Venture distributes the net income of the co-venturers, pursuant to their agreed profits/income sharing, it shall withhold the tax based on the net income of its co-venturers. (BIR Ruling No. 13-2018 dated January 10, 2018)

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,

Lilia C. Guillermo

**LILIA CATRIS GUILLERMO**
*Commissioner of Internal Revenue*
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