REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

CIR vs CTA 134 SCRA 49; Plana vs CTA, G.R. No. L-52018
RR No. 2-98, as amended
BIR Ruling No. 006-03
JV - 354 - 2021

OCT 04 2021

DCCD-PRIMEX-ALAI-EDCOP-SYSTRA JOINT VENTURE
Sol Building 112 Amorsolo St.
Legazpi Village, 1229 Makati City

Attention: **Patricia Lee Alexandra Bautista**
JV Legal Counsel

Gentlemen:

This refers to your letter dated January 11, 2016 requesting confirmation on two (2) issues relative to the Consulting Services for Program Management, Construction Management and Capacity Building for PNR Capital Improvement Projects ("PNR Project") entered into by **DCCD-PRIMEX-ALAI-EDCOP-SYSTRA JOINT VENTURE ("Joint Venture")** with the Philippine National Railways ("PNR"), to wit:

1. that the above Joint Venture is a specialty contractor subject to the two percent (2%) expanded withholding tax (EWT); and
2. that the reimbursables or amounts advanced by the Joint Venture for and on behalf of PNR are not income payments to the Joint Venture, hence, not subject to EWT and VAT.

It is represented that the Joint Venture comprises five (5) companies, namely:

1. DCCD Engineering Corporation (DCCD) (TIN:)
2. Pacific Rim Innovation and Management Exponents, Inc. (PRIMEX) (TIN:)
3. Angel Lazaro & Associates International (ALAI) (TIN:)
4. Engineering and Development Corporation of the Philippines (EDCOP) (TIN:)
5. SYSTRA Philippines, Inc. (SYSTRA) (TIN:)

that the above companies are engineering consulting firms that provide technical services ranging from pre-feasibility to feasibility studies, conceptual to basic to detailed engineering designs, value engineering/value assessments, program management, construction supervision and management, independent consultant/ engineer services, among others; that said companies entered into a Joint Venture Agreement (JV Agreement) on June 18, 2015 whereby the parties agreed to join their resources, equipment and what is needed to participate in the eligibility, bidding and undertaking of the PNR Project; that on August 13, 2015, PNR and the Joint Venture entered into a Contract for the Consulting Services for Program Management, Construction Management and Capacity Building for PNR Capital Improvement Projects for and in consideration of (Php), inclusive of all applicable taxes; that said Contract is limited to the following works:

1. Track Rehabilitation from Tutuban to Los Baños, Laguna
2. Double Tracking from Sucat to Alabang
3. Track ballasting for Hondagua Division
4. Railway Bridges Repair and Rehabilitation
5. Restoration of Station Building including platform and passenger shelter improvements
6. Repair of Six (6) Diesel Multiple Units (DMUs)
7. Rehabilitation of Rolling Stock/Locomotives

and that the scope of work relative to the PNR Project includes the following:

1. Assistance to Bidding
2. Construction Quality Assurance
3. Field Inspection
4. Project Scheduling
5. Contract Dispute Assistance and Resolution
6. Constructability/Value Engineering Reviews
7. Factory Inspection
8. Job Site Safety
9. Capacity Building for Financial Management/Asset Management Consulting Services.

In reply, please be informed that Section 2.57.2 (E) (3) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 06-2001, provides the applicable withholding tax rate to be imposed on gross payments made to certain contractors, whether individual or corporate, such as general engineering contractors, general building contractors and specialty contractors. Under the said regulations, the applicable withholding tax rate for the above contractors is two percent (2%).

For purposes of defining the businesses covered by the said withholding tax rate, a description and/or enumeration of the activities undertaken by entities falling under each of these categories are provided in the above-mentioned regulations, as follows:

> *"Section 2.57.2 Income payment subject to creditable withholding tax and rates prescribed thereon. —*

Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

xxx xxx xxx

(E) Income payments to certain contractors. — On gross payments to the following contractors, whether individual or corporate — ***<u>Two percent (2%)</u>***

(1) ***General engineering contractors*** *— Those whose principal contracting business in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects:*

(a) Reclamation works;
(b) ***<u>Railroads</u>****;*
(c) Highways, streets and roads;
(d)

xxx xxx xxx

(2) ***General building contractors*** *— Those whose principal contracting business is in connection with any structure built, for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereto. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds, and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skills, powerhouse, power plants and other utility plants and installation, mines and metallurgical plants, cement and concrete works in connection with the above-mentioned fixed works.*

(3) ***Specialty Contractors*** *— Those whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts."*

In *BIR Ruling No. 006-03* dated August 15, 2003, this Office ruled that a corporation with the primary purpose to carry on the business of quantity surveyors, project managers, advisers, technicians, investigators and researchers in the field of industrial, commercial, residential and infrastructure development and commerce of all and every description is considered a specialty contractor. The aforesaid Ruling cited the case of *Commissioner of Internal Revenue vs. The Court of Tax Appeals and Avecilla Building Corporation*, 134 SCRA 49, in which it was ruled that a corporation authorized to render general engineering and contracting of all kinds of constructions and structures, employing and contracting with architects, engineers, surveyors, chemists and other technical men to perform engineering and architectural work, including the preparation of surveys, plans, specifications, estimates, etc., and to act as consulting and or supervising engineers and architects in connection with the said contracting and building business is considered a contractor under then Section 191 of the Tax Code, which lists the persons subject to the then contractor's tax.

Further, in the case of *Hon. Efren I. Plana vs. Court of Tax Appeals and Engineering Development Corporation of the Philippines*, G.R. No. L-52018 (February 23, 1990), the Supreme Court likewise had the occasion to rule that a corporation which is engaged in providing "general scientific, engineering and technological services in all the various branches thereof, including but not limited to evaluation, appraisal, market studies, project reports, management, consultation, construction supervision, training and/or engagement in any work or plan is deemed a specialty contractor

In the instant case, since the Joint Venture will render services requiring special skills, this Office hereby confirms your opinion that the Joint Venture is a specialty contractor within the purview of Section 2.57.2 (E) (3) of RR No. 2-98, as amended. Accordingly, it is subject to creditable withholding tax at the rate of 2% on the service fees it will receive from PNR.

With regard to the reimbursables or amounts advanced by the Joint Venture for and on behalf of PNR, the same shall not constitute taxable income payments to the Joint Venture, and therefore exempt from the EWT and VAT, provided that said amounts are invoiced directly in the name of the PNR and the reimbursement to the Joint Venture is not invoiced with the Joint Venture's VAT invoice/official receipt. Moreover, payments for goods and services made by the Joint Venture for and on behalf of the PNR must be properly subjected to applicable EWT and 5% final VAT in accordance with existing rules and regulations.

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

K-1