REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 22(B); 114 NIRC; RR 14-02; RR 10-12
BIR Ruling No. 176-14; BIR Ruling No. 475-14
#340-2016
6-29-2016

CHINA GEO-ENGINEERING CORPORATION/
PHILWORKS CONSTRUCTION & SUPPLY (JV)
6-11 Compound, MIA Road, Pasay City

Attention: **Ms. Grace B. De Leon**
JV Partner

Gentlemen:

This refers to your letter dated March 31, 2015 requesting for a ruling that the joint venture between China Geo-Engineering (Phil.) Corporation ("China Geo") and Philworks Construction & Supply ("Philworks") for the exclusive purpose of pre-qualifying, participating and actually undertaking the construction of *JICA Assisted Road Upgrading and Preservation Project,* *Asset Preservation Contract-Preventive Maintenance (APC-PM) Component, Hybrid Long Term Performance Based Maintenance (LTPBM) Contract PBM-3 Maharlika Highway, Sipocot-Baao Road Section, KO370+700 to KO480+146, Province of Camarines Sur, Region V,* ("JV Project") is exempt from income tax and consequently, not subject to the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) Nos. 014-02 and 10-12.

Documents submitted disclosed that China Geo-Engineering (Phil.) Corporation/Philworks Construction & Supply Joint Venture ("JV"), with TIN , is an incorporated joint venture with SEC Registration No. formed to undertake the pre-qualification and construction of the JV Project; that the JV is also registered with the Philippine Contractors Accreditation Board (PCAB) with Special Contractor's License No. first issued on November 28, 2014; that on the other hand, China Geo is registered with the BIR with TIN and is engaged in the business of building of constructions or parts and civil engineering; that it is also registered with the PCAB with Special Contractor's License No. first issued on November 28, 2014; that Philworks is likewise registered with the BIR with TIN and is engaged in the business of building of constructions or parts and civil engineering; that it is also registered with the PCAB with

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Contractor's License No. 15-02434 first issued on November 25, 2005; that the JV entered into a contract with the Department of Public Works and Highways (DPWH) for the implementation and construction of the afore-mentioned JV Project; and that the herein co-venturers have mutually bind each other to contribute to the joint venture, on a China Geo (75%) and Philworks (25%) percentage of participation, all the necessary capital, equipment, technical personnel, management, supervision, and other efforts and resources for the proper prosecution or implementation of the project and to extend to each other their respective fullest cooperation and best efforts toward profitable construction of the project in accordance with approved plans and specifications to complete the same with approved work schedule.

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

Likewise, Section 4(B)(5) of Revenue Regulations (RR) No. 14-2002 dated September 9, 2002 provides that the withholding of creditable withholding tax (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.

Furthermore, Section 3 of RR No. 10-2012 dated June 1, 2012 provides, to wit:

> "SECTION 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:
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> (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).

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Joint ventures involving foreign contractors may also be treated as a non-taxable corporation only if the member foreign contractor is covered by a special license as contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI); and the construction project is certified by the appropriate Tendering Agency (government office) that the project is a foreign financed/internationally-funded project and that international bidding is allowed under the Bilateral Agreement entered into by and between the Philippine Government and the foreign/international financing institution pursuant to the implementing rules and regulations of Republic Act No. 4566 otherwise known as Contractor's License Law.

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, China Geo-Engineering (Phil.) Corporation/Philworks Construction & Supply Joint Venture formed for the purpose of construction of the JICA Assisted Road Upgrading and Preservation Project, Asset Preservation Contract-Preventive Maintenance (APC-PM) Component, Hybrid Long Term Performance Based Maintenance (LTPBM) Contract PBM-3 Maharlika Highway, Sipocot-Baao Road Section, KO370+700 to KO480+146, Province of Camarines Sur, Region V, with the DPWH is considered as a joint venture not taxable as a corporation for complying with the conditions provided in RR 10-2012, *i.e.*, *(1) the JV is for the undertaking of a construction project; (2) the JV should involve joining or pooling of resources by licensed local contractors (licensed as general contractor by the (PCAB) or in case of foreign contractor (covered by a special license as contractor by the (PCAB); (3) the local contractors are engaged in construction business; and (4) the JV itself must likewise be duly licensed by PCAB*; and therefore not subject to the corporate income tax under Section 27(A) of the Tax Code of 1997, as amended, and consequently, to the 2% CWT prescribed under Section 57(B) of the same Code, as implemented by RR 2-98, as amended by RR No. 14-2002. *(Section 4(B)(5) of RR No. 14-2002 dated September 9, 2002)*

However, the DPWH, as a government withholding agent, should deduct and withhold a final value-added tax at the rate of five percent (5%) of its gross payment to the joint venture pursuant to Section 114(C) of the Tax Code of 1997, as amended.

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The herein joint venture 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 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. 475-14 dated November 26, 2014)*.

It should be emphasized that the respective net income of the co-venturers derived from the joint venture project is subject to the creditable withholding tax imposed under Section 57 of the Tax Code of 1997, as amended, and implemented by RR 2-98, as amended. Thus, before China Geo-Engineering (Phil.) Corporation/Philworks Construction & Supply 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.

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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