REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 22 (B) of the NIRC; RR 14-02; RR 10-12.
BIR Ruling No. 475-14.
#369-2017
8-9-2017

Tokwing Construction Corporation/
Metro Stonerich Corporation (JV)
Lot 35 Rodriguez Drive, Rodriguez Subd.,
Baesa, Quezon City 1106

Attention : **Mr. Reynaldo N. Manalansan**
Authorized Representative

Gentlemen:

This refers to your letters dated September 7, 2016 and November 4, 2016, requesting for a ruling that the joint venture between Tokwing Construction Corporation and Metro Stonerich Corporation for the purpose of undertaking the construction of the *Proposed Nine (9) Storey with covered Roofdeck HLURB Office Building located at HLURB Compound, Kalayaan Avenue corner Mayaman St., Diliman, Quezon City,* ("JV Project") is exempt from the two (2%) percent creditable withholding tax pursuant to Revenue Regulations (RR) No. 014-02.

Documents submitted disclosed that Tokwing Construction Corporation/Metro Stonerich Corporation Joint Venture ("JV"), with Tax Identification Number (TIN) 482-658-251-000 is an unincorporated joint venture formed to undertake the 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 December 7, 2015; that on the other hand, Tokwing Construction Corporation 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 Contractor's License No. first issued on June 11, 1987; that Metro Stonerich Corporation is likewise registered with the BIR with TIN No. and is engaged in the construction business; that it is also registered with the PCAB with Contractor's License No. first issued on December 21, 1999; that the JV entered into a contract with the Housing and Land Use Regulatory Board (HLURB) for the construction and completion of the afore-mentioned JV Project; and that the herein co-venturers have mutually agreed to contribute to the joint venture, all the necessary capital equipment,

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technical personnel, management supervision, and other efforts and resources for the proper implementation of the project and to extend to each other their respective fullest cooperation and best efforts towards profitable construction of the project in accordance with approved plans and specifications to complete the same based on the approved work schedule; and that the co-venturers agreed that their respective proportionate share in the profits and losses of the Joint Venture shall be 49% for Tokwing Construction Corporation and 51% for Metro Stonerich Corporation.

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:

> "SEC. 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:
>
> (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).
>
> xxx xxx xxx

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, Tokwing Construction Corporation/Metro Stonerich Corporation Joint Venture formed for the purpose of undertaking the construction of the *Proposed Nine (9) Storey with covered Roofdeck HLURB Office Building located at HLURB Compound, Kalayaan Avenue corner Mayaman St., Diliman, Quezon City,* with the HLURB 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 construction project; (2) the JV involves joining or pooling of resources by licensed local contractors (licensed as general contractor by the (PCAB); (3) the local contractors are engaged in construction business; and (4) the JV itself is 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.

Furthermore, the gross payments to the joint venture on the JV Project are likewise, not subject to the 2% creditable withholding tax 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)

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 Tokwing Construction Corporation/Metro Stonerich Corporation 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. 475-14 dated November 26, 2014)*.

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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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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