REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 22 (B) of the NIRC; RR No. 14-2002; RR No. 10-2012.
BIR Ruling No. 013-2018
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TAISEI – DMCI JOINT VENTURE
3/F DMCI Annex Bldg., 2278 Don Chino Roces Ave.
Magallanes, Makati City

Attention : **Kazuhiro Nishimoto**
General Manager

Gentlemen:

This refers to your letter dated July 24, 2019, requesting for a confirmation of your opinion on the taxation of the joint venture between Taisei Corporation and D.M. Consunji, Inc. for the purpose of constructing *Package 01: Elevated Structures, 6 Stations and Depot for the North-South Commuter Railway Project* ("JV Project").

Documents submitted disclose that Taisei-DMCI Joint Venture, is an unincorporated joint venture formed for the purpose of undertaking the JV Project; that the Joint Venture entered into a contract with the Government of the Republic of the Philippines through the Department of Transportation (DOTr) for the construction and completion of the afore-mentioned JV Project; that the Joint Venture, with Special Contractor's License No. originally issued on June 13, 2019 by the Philippine Contractors Accreditation Board (PCAB), is composed of two (2) contractors duly registered with the Securities and Exchange Commission (SEC), Bureau of Internal Revenue (BIR), and PCAB, namely:

1. **Taisei Corporation**, with Taxpayers Identification Number (TIN) SEC Registration No. , and PCAB Contractor's License No. originally issued on June 6, 2019; and

2. **D.M. Consunji, Inc.**, with TIN SEC Registration No and PCAB Contractor's License No. originally issued on January 30, 1969.

The herein co-venturers have mutually bind each other to contribute to the Joint Venture in accordance with the following participation shares — Taisei Corporation – fifty one percent (51%), and D.M. Consunji, Inc. – forty nine percent (49%) share, for all the necessary capital, equipment, technical personnel, management, supervision, and other efforts and resources for the proper execution or implementation of the JV Project and to extend to each other their respective fullest cooperation and best effort towards the successful construction and completion of the JV Project in accordance with the Project Contract.

On April 25, 2019, Taisei-DMCI Joint Venture was registered with the BIR, as a regular taxable corporation liable for corporate income tax, and was issued with TIN . Hence, this request.

In reply, please be informed that pursuant to Section 22 (B) of the National Internal Revenue Code of 1997 (Tax Code), as amended, the term "corporation" shall include partnerships, no matter how created or organized, joint stock companies, joint accounts *(cuentas en participacion)*, associations or insurance companies, but does not include general professional partnerships and a 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 2.57.5 (5) of RR No. 2-98, as amended, provides that:

*"**SECTION 2.57.5. Exemption from Withholding.** — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:*

xxx xxx xxx

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

xxx xxx xxx

(5) Joint ventures 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. Provided, however, ***joint ventures or consortium formed for the purpose of undertaking construction projects shall comply with the following conditions to be considered as joint venture not taxable as a corporation:***

a) Should involve joining or pooling of resources by licensed local contracts; that is, licensed as general contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI);

b) These local contractors are engaged in construction business; and

c) The Joint Venture itself must likewise be duly licensed as such by the PCAB of the DTI."(Emphasis and underscoring supplied)

Moreover, Section 3 of RR No. 10-2012, implementing Section 22 (B) of the Tax Code, as amended, states that:

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"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).

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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, the Taisei-DMCI Joint Venture formed for the purpose of constructing *Package 01: Elevated Structures, 6 Stations and Depot for the North-South Commuter Railway Project* is considered a joint venture not taxable as a corporation for complying with the conditions provided in RR No. 10-2012, i.e., (1) the Joint Venture is for the undertaking of construction project; (2) the Joint Venture 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 Joint Venture itself is duly licensed by PCAB; and therefore not subject to the corporate income tax under Section 27 (A) of the Tax Code, as amended.

Furthermore, the gross payments to the Taisei-DMCI 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 No. 2-98, as amended.

Taisei-DMCI 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, as amended, on their taxable

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income during each taxable year respectively derived by them from the aforesaid construction project.

It should be emphasized that the respective net income of the co-venturers derived from the JV Project is subject to the creditable withholding tax imposed under Section 57 of the Tax Code, as amended, and implemented by RR No. 2-98, as amended. Thus, before Taisei-DMCI Joint Venture distributes the net income to the co-venturers, pursuant to their agreed profits/income sharing, it shall withhold the tax based on the net income of its co-venturers and remit the same to the BIR. *(BIR Ruling No. 1421-18 dated December 7, 2018)*

Moreover, the Government of the Republic of the Philippines[1] shall, by itself or through its executing agency, assume:

(1) All fiscal levies and taxes imposed in the Republic of the Philippines on the Japanese companies operating as suppliers, contractors and/or consultants with respect to the payment carried out for and the income accruing from the supply of products and/or services required for the implementation of the Project; and

(2) All fiscal levies and taxes imposed in the Republic of the Philippines on the Japanese employees engaged in the implementation of the Project with respect to their personal income derived from Japanese companies operating as suppliers, contractors and/or consultants for the implementation of the Project.

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.[2]

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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[1] Number 7 (c) and (d) of the "Exchanges of Notes" both dated November 19, 2015, by and between Secretary Albert F. Del Rosario of the Department of Foreign Affairs, Republic of the Philippines and Kazuhide Ishikawa, Ambassador Extraordinary and Plenipotentiary of Japan, which constitute an agreement between the two Governments.

[2] Section 4 of RR No. 10-2012.