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

RR No. 2-98, as amended;
BIR VAT Ruling No. 017-00
OT- - 78 - 2022

Pertconsult International
9th Floor The Excelsior Building
161 Roxas Blvd., Paranaque City

Attention: **Homobono C. Pique**
General Manager

Gentlemen:

This refers to your request for ruling on the correct withholding tax for the payment of services rendered by **Pertconsult International** (Pertconsult) as an engineering consulting firm to the Department of Public Works and Highways (DPWH).

It is represented that Pertconsult provided consulting services to the DPWH; and that it contracted professionals or hired subcontractors who specialize in specific fields of expertise in the accomplishment of the project stated in the contract agreement with the DPWH.

Records show that the DPWH, as withholding agent, withheld fifteen percent (15%) on the income payments made to Pertconsult pursuant to DPWH Order No. 95, Series of 2020, in relation to Section 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended[1]. Moreover, the reimbursable costs of the consultancy contract were included in the computation of gross receipts for purposes of withholding tax.

In this regard, you request for confirmation of your opinion that the imposable withholding tax should only be two percent (2%) since Pertconsult is a general engineering contractor, and that the reimbursable costs should not be part of Pertconsult's gross receipts subject to withholding tax.

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[1] SECTION 2.57.2. *Income Payments 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:

(A) Professional fees, talent fees, etc. for services rendered — On the gross professional, promotional, and talent fees or any other form of remuneration for the services rendered by the following:

xxx xxx xxx

Non-individual payee:
If gross income for the current year did not exceed P720,000 - Ten percent (10%);
If gross income exceeds P720,000 - Fifteen percent (15%)

In reply, ***Section 2.57.2 (C)(1) of RR No. 2-98, as amended***, states that:

> *"SECTION 2.57.2. Income Payments 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*
>
> *(C) Income payments to certain contractors [formerly under letter (E)] — On gross payments to the following contractors, whether individual or corporate — Two percent (2%).*
>
> *(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) Railroads;*
> *(c) Highways, streets and roads;*
> *(d) Tunnels;*
> *(e) Airports and airways;*
> *(f) Waste reduction plants;*
> *(g) Bridges, overpasses, underpasses and other similar works;*
> *(h) Pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances;*
> *(i) Land leveling;*
> *(j) Excavating;*
> *(k) Trenching;*
> *(l) Paving; and*
> *(m) Surfacing work."*

In applying the aforequoted provision, it is clear that Pertconsult is indeed a general engineering contractor since it uses special skills in the furtherance of the project with the DPWH and it carried out its services based on sound engineering theories and practices as stated in the contract agreement.

Accordingly, all income payments received by Pertconsult as a general engineering contractor are subject to the creditable withholding tax rate of two percent (2%) as provided under Section 2.57.2 (C)(1) of RR No. 2-98, as amended.

As to the reimbursable contract items, please be informed that income means all wealth which flows into the taxpayer other than as a mere return of capital. In ***Commissioner of Internal Revenue (CIR) vs. Agrinurture, Inc***[2], the CTA held that the following elements must be met to constitute income:

> *"The three (3) elements for the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or*

[2] CTA EB No. 8345, January 13, 2015

constructively, and (3) it is not exempted by law or treaty from income tax. Income tax is assessed on oncome received from any property, activity or service."

In connection therewith, this Office had the occasion to rule in BIR VAT Ruling No. 017-00 that reimbursement of actual expenses does not constitute income, *viz:*

> *"In reply, please be informed that* ***reimbursable costs of consultancy contracts, being reimbursements of expenses and not charges for services should not be considered part of gross receipts for purposes of the withholding tax****. As such, it is not subject to the VAT. However, in order that a contractor's receipts for reimbursable expenses will not be considered part of its gross receipts subject to VAT, all invoices for said expenses must be in the name of the government agency concerned."* (Underscoring and emphasis ours)

Therefore, based on the above discussions, Pertconsult's reimbursable costs shall not form part of its gross receipts subject to withholding tax, provided, however, that the invoices for said costs are in the name of the DPWH.

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue
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