REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RR 2-98; RR 6-2001 BIR Ruling No. 153-10 BIR Ruling No. 006-03
0732-2019 DEC 09 2019

PUNONGBAYAN & ARAULLO
19th and 20th Floors, Tower I
The Enterprise Center
6766 Ayala Avenue
1200 Makati City

Attention : **Atty. Olivier D. Aznar, CPA**
Partner, Tax Advisory & Compliance

Gentlemen:

This refers to your letter dated September 4, 2014 requesting on behalf of your client, TCGI, Inc. (the "Company") for confirmation of your opinion that the service fees received by the Company from its clients are subject to the creditable withholding tax rate of two percent (2%) pursuant to Section 2.57.2 (E)[1](3) of Revenue Regulations (RR) No. 2-98, as amended.

It is represented that TCGI, Inc. with TIN , is a domestic corporation registered with the Securities and Exchange Commission (SEC) bearing Company Reg. No. ; that its primary purpose is to enter into contract for mechanical, electrical, industrial, sanitary and civil works such as preparation of plans, consultation, management consultation, feasibility studies project management, construction management, construction supervision, procurement, and works administration, among others; that the Company also provides contract services as project managers and/or independent contractors in relation to any general construction, including inspection, maintenance and repair, and other highly professional and technical services necessary and incidental thereto; that the Company specifically provides master planning and detailed engineering designs, technical specifications and construction quantity and cost estimates necessary to build amenities and infrastructures, develop sites, and consultancy on the review, update, and revision of the designs; and that the amenities and structures include road networks, drainage, water sewerage, power lightning and telephone system, warehouse, bridge, dock or pier, utility building, canteen, office, shopping mall, airport terminal facilities, and taxi ways.

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[1] Now Section 2.57.2 (C)(3) under RR No. 11-2018 dated January 31, 2018 amending RR 2-98.

It is further represented that certain clients also avail of the Company's construction management services which are done on the pre-construction phase up to the post construction phase of the projects. The construction management services include assistance to clients in the assessment and quantification of all works required and preparation of scope of works; implementation of project control which includes evaluation of work progress, manpower and materials cost, and construction supervision during construction phase, quality control which includes inspection of all work to assure strict compliance with quality requirements, cost control which includes evaluation and recommendation for payment of client's suppliers, schedule control which includes identifying delays and slippage in schedule and cost complications and relaying the same to concerned parties involved, and project documentation which includes tender of progress accomplishment reports of the projects, among others.

In pursuit of the Company's business, its work engineers and personnel undertake activities that require the use of special skills and specialized trades and crafts to promote its business to service its clients.

In reply, please be informed that Section 3 of RR No. 6-2001, amending Section 2.57.2 (E) (3) of RR No. 2-98, defines the term *"Specialty Contractor"* as "those whose operations pertain to the performance of construction work requiring special skill and whose contracting business involves the use of specialized building trades or crafts". Gross payments to such persons are subject to creditable withholding tax at the rate of 2%.

In BIR Ruling No. 006-03 dated August 15, 2003, this Office ruled that for purposes of withholding tax, Davis Langdon and Seah Philippines, ("DLS"), an independent firm of quantity surveyors, cost engineers and construction cost specialists, is considered a specialty contractor. DLS renders quantity surveying services in building and other civil works projects including, but not limited to, initial design, tendering procedures and contracting arrangements, cost studies and planning, master development programming, tender contract analysis and report, construction progress financial statement preparation, advisory contract administration, valuation of construction work in progress and cost and material supervision in each and every work phase of construction, which services pertain to the performance of construction work requiring special skill. Notwithstanding the fact that DLS does not perform actual construction work, DLS is considered a specialty contractor, because its principal contracting business involves the use of specialized building trades or crafts. Accordingly, said ruling states that "as a specialty contractor, the professional fees that DLS receives for quantity surveying services are subject to creditable withholding tax at the rate of 2% effective October 1, 2001 (formerly 1%), in accordance with Section 3 of RR No. 6-2001, amending Section 2.57.2 (E) of RR No. 2-98."

0732-2019
DEC 09 2019

The same BIR Ruling likewise cited the case of *Commissioner of Internal Revenue vs. The Court of Tax Appeals and Avecilla Building Corporation, 134 SCRA 49 (1985)*, wherein the Supreme Court ruled that a domestic corporation engaged in the business of "general engineering and contracting all kinds of constructions and structure; employing and contracting with architects, engineers, surveyors, chemists and other technical men, to perform engineering and architectural works, 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 Section 191 of the Tax Code, which lists the person subject to the then contractor's tax.

The previous aforementioned decision was also quoted in the case of *Hon. Efren I. Plana, in his capacity as Commissioner of Internal Revenue, petitioner, vs. Court of Tax Appeals and Engineering Development Corporation of the Philippines, G.R. No. L-52018, February 23, 1990*, which considers a corporation 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" a specialty contractor. The Court stated that "it does not matter if no actual construction work was performed; what is important and determinative is that [the company] sold services, the exercise of which activity is a privilege taxable under the law."

Based on the foregoing, this Office hereby confirms your opinion that TCGI, Inc. is a specialty contractor since it is engaged in construction management, consultancy and general contracting services, and generally carrying any activities in conjunction with and related to any of the services as afore-mentioned. Accordingly, the service fees received by TCGI, Inc. from its clients are subject to creditable withholding tax at the rate of 2% pursuant to Section 2.57.2 (E) (3) OF RR 2-98, as amended by RR 6-2001. *(BIR Ruling No. 153-2010 dated December 22, 2010)*

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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