



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 018.2022

YUJI TADENUMA

Chief Administration Manager

Taisei-DMCI Joint Venture

3rd Floor, DMCI Annex Bldg.,

2278 Chino Roces Ave.,

Magallenes, Makati City

**SUBJECT : Request for Review of Bureau of Internal Revenue Ruling
No. JV-317-2022 dated 28 June 2022**

Dear **Yuji Tadenuma**:

This refers to your letter dated 28 July 2022 ("Request for Review"), which you filed with this Department on behalf of TAISEI-DMCI Joint Venture ("TDJV") to request the review of Bureau of Internal Revenue ("BIR") Ruling No. JV-317-2022, which ordained that the respective net income of the co-venturers derived from the joint venture project is subject to the creditable withholding tax (CWT) imposed under Section 57 of the National Internal Revenue Code (NIRC), as amended, and implemented by Revenue Regulations (RR) No. 2-98, as amended.

The Request for Review prays for the reversal of the above BIR finding which states that TDJV should withhold CWT on the distribution of income to its co-venturers, thus:

"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 (NSCR) Project is considered a joint venture not taxable as a corporation for complying with the conditions provided in RR No. 10-2012 xxx

Furthermore, the gross payments to the Taisei-DMCI Joint Venture on the JV Project are likewise not subject to 2% creditable withholding tax prescribed under Section 57 (B) of the same Code, as implemented by RR No. 2-98, as amended.xxx

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 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 distributed 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.

Moreover, the Government of the Republic of the Philippines¹ 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. xxx" (Emphasis supplied)

On the other hand, TDJV argues in its Request for Review that the BIR's theory that the distributive share of the co-venturers are subject to CWT is misplaced for the following reasons:

- a. There is no basis for the imposition of EWT in the distribution of the net distributable shares of the co-venturers; and

¹ Pursuant to Exchange of Notes dated 19 November 2015.

- b. The DOTr shall assume any EWT, if any, on the distribution of the net income of Taisei Corporation, a Japanese Corporation co-venturer.

The main issue that needs resolution in the present case is whether the net distributive share of a co-venturer in a tax-exempt joint venture is subject to CWT.

Ruling

We agree with the BIR that the TDJV is a valid joint venture or consortium formed for the purpose of undertaking construction projects fully compliant with the requirements under Section 3 of Revenue Regulations (RR) No. 10-2012, hence not taxable as a corporation under Section 22 of the NIRC. Aside from the JV's exemption from regular corporate income tax (RCIT), it is also exempt from any withholding taxes pursuant to Section 2.57.5 (5) of RR 11-2018 amending RR 2-98.

However, after reviewing the facts and laws presented, we find that the BIR made a reversible error when it further declared in BIR Ruling No. JV-317-2022 that the distributive share of the co-venturers in a tax exempt JV is subject to CWT.

Section 3 of RR No. 10-2012 provides that co-venturers are liable for their own taxes, viz:

“xxx The member 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.”

Thus, TC and DMCI will each be liable for RCIT according to Section 28 of the NIRC providing for Tax Rates for Foreign Corporations and Section 27 of the NIRC providing for Tax Rates for Domestic Corporations, respectively.

Please note that the NIRC, as amended, does not have an explicit provision imposing CWT on the net income distributed to each co-venturer in a non-taxable JV.

Moreover, Section 2.57.2 of RR No. 2-98, as amended, which provides a list of income payments subject to CWT and the rates prescribed thereon, appears to contain an exclusive enumeration of transactions that are subject to the withholding tax scheme.

A careful review of pertinent regulations on withholding tax does not show that the distributive share of a co-venturer in a non-taxable JV is among the transactions

enumerated as subject to CWT. On the other hand, Section 2.57.2 (E) of RR No. 11-2018 prescribed the withholding of fifteen percent (15%) or ten percent (10%) tax on the distributive share or income payments to partners of a general professional partnership (GPP), to wit:

“Income Payments to Partners of a GPP. – Income payments made periodically or at the end of the taxable year by a GPP to the partners, such as drawings, advances, sharings, allowances, stipends, etc – Fifteen percent (15%), if the gross income for the current year exceeds PhP720,000.00; and ten percent (10%), if otherwise.

Pursuant to Section 22(B) of the NIRC, a GPP is defined as a partnership formed by persons for the sole purpose of exercising their common profession where no part of the income of which is derived from engaging in any trade or business.

On the other hand, a joint venture is an “association of persons or companies jointly undertaking some commercial enterprise; generally, all contribute assets and share risks which requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and a duty, which may be altered by agreement to share both in profit and losses.”² “It is in fact hardly distinguishable from a partnership since their elements are similar.”³ “The main distinction is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature.”⁴

Since a GPP is not a similar entity with a joint venture, the withholding of tax pertaining to a GPP cannot be applied similarly to a joint venture.

It is for the foregoing reasons that this Office disagrees with the decision of the Commissioner of Internal Revenue in BIR Ruling No. JV-317-2022 that the distributive share of the co-venturers from the joint venture project is subject to CWT.

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.

² Kilosbayan vs, Guingona, G.R. No. 113375 dated 5 May 1994.

³ Aurbach, et. al. v. Sanitary Wares Manufacturing Corporation, G.R. No. 75875 dated 15 December 1989.

⁴ *Ibid.*

Thank you.

Sincerely yours,


BENJAMIN E. DIOKNO

Secretary of Finance

OCT 17 2022



DEPARTMENT OF FINANCE
Republic of the Philippines



CC: Commissioner Lilia Catris Guillermo
Bureau of Internal Revenue