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## Joint venture

MANY projects in the Philippines are covered by joint-venture arrangements, especially large infrastructure undertakings involving the resources of big corporations, necessitating partnerships with foreign and local partners.

Joint venture is defined by our jurisprudence as an association of persons or companies jointly undertaking some commercial enterprise; generally all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy connected therewith, and duty, which may be altered by agreement to share both in profit and losses. It is also held in one case that a joint venture is a species of partnership and, thus, governed by the laws of partnership as there is no statutory provision that recognizes or governs directly joint ventures. There are also no model joint-venture agreements that have been published by any authority.

While both a partnership and a joint venture are treated as corporate-taxpayers subject to corporate income tax, our Tax Code makes an exception for a joint venture or consortium formed for the purpose of undertaking construction projects or energy projects with the government, which shall not be taxed as a corporate taxpayer.

As so provided in Section 22(B) of the Tax Code of 1997, the term corporation includes partnership, 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.

From the foregoing definition of a corporation, joint venture is not embraced within the meaning of the term "corporation," hence, not subject to the corporate-income tax.

It was PD 929 (May 4, 1976) that amended the definition of the taxable corporation in the old tax code so as not to include joint venture formed for the purpose of undertaking construction projects for the following reasons: (1) Local contractors contribute substantially

to the development program of the country. (2) Local contractors are at a disadvantage in competitive bidding with foreign contractors in view of limited capital and financial resources. (3) In order to be able to compete with big foreign contractors, it may be necessary for them to enter into joint ventures to pool their limited resources in undertaking big construction projects. (4) To assist them in achieving competitiveness with foreign contractors, the joint ventures formed by them should not be considered an additional income-tax lien.

Since then, it had been the position of the BIR itself that joint ventures formed for the purpose of undertaking construction projects are not considered taxable corporations. Recently, however, the BIR issued Revenue Regulation (RR) 10-2012 clarifying the exemption of joint ventures or consortia formed to undertake construction projects.

Said RR 10-2012 provides for the requirements of a nontaxable joint venture or consortium formed for the purpose of undertaking construction projects as follows:

The joint venture should be for the undertaking of construction project.

The joint venture 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).

The local contractors are engaged in construction business.

The joint venture itself must likewise be duly licensed as such by the PCAB of the DTI.

This means that if any of these requirements is not present, the joint venture or consortium formed for the purpose of undertaking construction projects shall be considered as a taxable corporation. It would seem that a joint venture between a landowner and a developer where the landowner is not into construction business would not be considered as nontaxable joint venture. Likewise, a joint venture where one of the party or both parties are not PCAB-licensed would not be covered by the exemption.

For a joint venture involving foreign contractors, it may also be treated as a nontaxable corporation only if it is given a special license by the PCAB and the construction project is certified as appropriate by the tendering agency that the project is foreign-financed or internationally funded project and that international bidding is allowed under the bilateral agreement between the government and the foreign financial institution.

RR 10-2012 also makes it mandatory to all licensed local contractors to enroll with the Bureau of Internal Revenue's Electronic Filing and Payment System. The enrollment should be done at the Revenue District Office (RDO) where the local contractors are registered as taxpayers.

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