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

Secs. 24, 34(h), 222, 318 & 319, NIRC	000-00	OT- 052-2021

Person to Contact: Chief, Law & Legislative Division
Tel Nos. 926-55-36/927-09-63

Date: MAR 0 . 2021

TAN CONCEPCION & QUE LAW OFFICES
Suites 1501-1502 The Orient Square Building
F. Ortigas, Jr. Road, Ortigas Center, 1605 Pasig City

Attention: **Atty. Cynthia M. Laureta**

Gentlemen:

This refers to your letter dated February 16, 2010 requesting on behalf of your client, **Atty. Danilo L. Concepcion** (Atty. Concepcion), liquidator of the *National Steel Corporation (NSC)*, for confirmation of the tax exemptions and/or waiver from the payment of taxes arising from two (2) sales transactions over four (4) parcels of land located in Kalawaan, Pasig City (the "Properties"), covered by the following Transfer Certificates of Title (TCT), to wit:

TCT No.	Area (in sq. m.)
	31,089
	4,700
	10,376
	5,139
TOTAL	**51,244**

This request is being made to support your application for the issuance of Certificates Authorizing Registration (CAR) for the sales transactions over the Properties, as follows:

a) First CAR – for the sale by the *Development Bank of the Philippines* (DBP) of the Properties to the *National Development Corporation* (NDC) under a Deed of Sale executed on August 26, 1983; and

b) Second CAR – for the sale by NDC of the Properties to NSC under a Contract of Sale dated September 29, 1983.

As represented, Atty. Concepcion was appointed Liquidator of NSC pursuant to the Order of the Securities and Exchange Commission (SEC) issued on November 7, 2000 in SEC Case No. As such Liquidator, he is tasked with pooling all assets of NSC in trust for all its current creditors. While NSC has been in possession of the owner's duplicate copies of the TCTs over the Properties since May 8, 1996, to date, the TCTs over the Properties remain in the name of DBP, by reason of inability of NSC to obtain the CARs over the above mentioned sales transactions over the Properties.

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Background

1. The Properties were acquired by DBP from *Elizalde Steel Consolidated, Inc.* ("Eliscon") under a Deed of Cession of Property in Payment of Debt executed on December 28, 1978. DBP subsequently consolidated its title over the Properties and obtained the TCTs over the Properties in its name.

2. Under a Memorandum of Agreement (MOA) executed by and between DBP and NDC on May 4, 1983, NDC agreed to purchase and acquire from DBP and DBP agreed to sell, transfer and convey to NDC, the Properties[1] in accordance with the following conditions:

   - The sale and purchase would be effected at Closing, which, as stipulated in the MOA, is to take place within one hundred eighty (180) days from the signing of the MOA, subject to compliance with certain conditions.[2]

   - One of the conditions for Closing is the delivery by NDC of the agreed purchase price of the Properties in the amount of F , in the manner provided for under the MOA, i.e., by way of the delivery by NDC to DBP of non-negotiable promissory notes of NDC covering a period of thirty (30) years.[3]

   - Upon Closing, DBP would execute and deliver its *grant deed or grant deeds to the (Properties), duly acknowledged, in form suitable for recordation with the Register of Deeds, for transfer of title to NDC.*[4]

3. Within the above mentioned 180-day period for Closing, or on August 26, 1983, DBP and NDC executed a Deed of Sale, under which DBP sold, transferred and conveyed to NDC the assets of Eliscon, including the Properties.

4. On September 29, 1983, NDC and NSC executed a Contract of Sale over the Properties, under which NDC sold, transferred and assigned all of its rights, title and interest in and to the Properties to NSC. Notwithstanding that the agreed purchase price was payable over a period of thirty (30) years, the Contract of Sale explicitly provided that all of NDC's rights, title and interest in the Properties would pass to NSC upon the execution of the Contract of Sale, and that NSC shall be responsible for effecting the registration and transfer of the tiles over the Properties from the present registered owner (i.e., DBP) to NSC.[5] Additionally, under the Contract of Sale, all taxes due on the transaction were passed on to NSC as the buyer of the Properties.[6]

5. Under cover of a letter dated May 8, 1996, NDC delivered the TCTs over the Properties to NSC for the purpose of enabling NSC to transfer the same to its name.

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[1] Section 1, DBP-NDC MOA
[2] Section 1 in relation to Section 4, DBP-NDC MOA
[3] Section 5.2.1 in relation to Section 2, DBP-NDC MOA
[4] Section 5.1.3(a), DBP-NDC MOA
[5] Section 5, NDC-NSC Contract of Sale
[6] Section 12, NDC-NSC Contract of Sale

6. The subject sale and purchase transactions were granted tax-exempt status as follows:

   - For the sale from DBP to NDC:

     (a) Prior to the execution of the Deed of Sale between DBP and NDC, in a Memorandum signed by Cesar C. Zalamea, then Chairman of the DBP, and Manuel Elizalde, Jr., addressed to then President Ferdinand E. Marcos (Pres. Marcos), DBP requested that the Bureau of Internal Revenue (BIR) *grant a waiver on documentation costs and taxes, as well as registration fees,* on the sale of the Properties by DBP to NDC.

     (b) The aforesaid request was approved by then Pres. Marcos, as indicated in his handwritten approval on the Memorandum.

     (c) The grant by then Pres. Marcos of the aforesaid request was confirmed in the June 1, 1983 letter of the BIR, through then Deputy Commissioner Tomas Toledo, in which it was confirmed *that the documentation costs, taxes and registration fees that may be due to the Bureau on the aforesaid sale agreement (between DBP and NDC) are waived.*

   - For the sale from NDC to NSC:

     (a) In a letter dated July 1, 1996, NSC requested the BIR for the issuance of a *certificate of exemption and authority to register* the sale of the Properties from NDC to NSC, citing that under the Contract of Sale, all taxes from the sale transaction were assumed by NSC as the buyer of the Properties, and that at the time of the execution of the Contract of Sale, NSC was exempt from the payment of all internal revenue taxes by reason of its being registered as a preferred pioneer enterprise with the Board of Investment (BOI).

     (b) In response to the aforesaid letter of NSC, BIR Ruling No. DA-053-97 dated February 2, 1997 was issued to NSC, confirming that the Contract of Sale was exempted from the payment of Documentary Stamp Taxes (DST) by virtue of the tax exemptions granted to NSC as an entity registered with the BOI under the Omnibus Investments Code [Presidential Decree (P.D.) No. 1789]. The said BIR Ruling further stated that the same *serves as (the) authority (of NSC) to secure a Certificate of Registration from the Revenue District Officer concerned authorizing registration of the aforesaid properties covered by the Contract of Sale executed by and between the (NDC), as seller, and (NSC), as buyer, without payment of the DST x x x.*

7. NSC had previously attempted to obtain CARs for the subject transactions over the Properties, but was not able to follow up on the same. You have revived the said CAR applications for the purpose of obtaining the registration of the Properties in the name of NSC. Following the advice of Revenue District Office (RDO) No. 43, you request for a ruling affirming the aforesaid tax waiver/exemption ruling, particularly in respect of the DST and other taxes due on the August 26, 1983 Deed of Sale between DBP and NDC.

Based on the foregoing, this Office now rules on the following issues raised for our consideration:

Sale from DBP to NDC

President Marcos has the power to grant tax waiver on the sale of the Property by DBP to NDC.

Art. VII, Sec. 1 of the 1987 Philippine Constitution provides that *"[t]he executive power shall be vested in the President of the Philippines."* Although the Constitution enumerates the powers exercised by the President, it does not define what is meant by executive power. In *Marcos vs. Manglapus, G.R. No. 88211 September 15, 1989*, the Supreme Court in answering the issue on whether the President's powers are limited to those specifically enumerated in the Constitution, held the view that "the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated". Citing the landmark decision of *Springer v. Government of the Philippine Islands*, 277 U.S. 189 (1928), the High Court stated that whatever power inherent in the government that is neither legislative nor judicial has to be executive. It should be mentioned though that under the 1973 Constitution President Marcos was also the de facto Legislature hence, his acts were considered valid exercise of legislative power.

The taxing power of the President to pursue his policy objectives may be exercised by him through executive action i.e., executive orders and regulations. In cases where laws limit the President's power to pursue his policy objectives, he can submit his proposal to Congress by taking the legislative route. The President likewise pursues his policy objectives through the exercise of his power of appointment and removal of agency heads and issuance of executive orders and presidential memoranda directing executive officials to take specific actions.

In the instant case, DBP requested then President Marcos, through a Memorandum signed by then DBP Chairman Cesar Zalamea and Manuel Elizalde, Jr., that the BIR grant a waiver on documentation costs and taxes, as well as registration fees, on the sale by DBP of the Properties to NDC. The request was granted by President Marcos through a handwritten approval dated April 23, 1983 on the aforesaid Memorandum.

Premises considered, it follows that President Marcos had the power to grant the aforesaid waiver of taxes.

THEREFORE, this Office hereby affirms, what was already confirmed by then Deputy Commissioner Tomas Toledo in his June 1, 1983 letter addressed to DBP Chairman Cesar C. Zalamea, that the documentation costs, taxes and registration fees that may be due to the BIR on the aforesaid sale agreement are waived.

Sale from NDC to NSC.

Under Section 318 of the National Internal Revenue Code of 1977, as amended (Tax Code), the provision of law governing the prescriptive period of the right to assess and collect

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taxes at the time of transaction, internal revenue taxes shall be assessed within five (5) years after the return was filed. It is only in cases of false or fraudulent return with intent to evade tax or of failure to file a return that the tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission. (Section 223, Tax Code).

Section 319 (a) of the Tax Code, provides that in the case of failure to file a return, the period of limitation of assessment and collection of taxes does not set in.

Based on the above-cited provision, when a return is filed beyond the period prescribed by law, the taxes that may be due thereon should be assessed within five (5) years from the date of the actual filing thereof. In the case at hand, the records show that the capital gains tax return for the transfer of the Properties from NDC to NSC was filed on February 13, 1997. Accordingly, the BIR had until February 13, 2002 to assess and collect the taxes due on the sale of the Property by NDC to NSC. As there was no assessment issued either to NDC or NSC within the five-year period, the right of the Government to assess and collect capital gains tax due on the transfer is now barred by prescription. Hence, all other issues raised are moot and academic.

On the basis of the foregoing, the Revenue District Officer of Revenue District Office No. 43 is hereby directed to issue the corresponding Certificate Authorizing Registration (CAR) to authorize the transfer of the Properties in favor of NSC subject to submission and presentation of the mandatory documents necessary to facilitate the issuance of the CAR.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained 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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