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

Sections 39 (A) (2) & (3); 73; 196 of National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 6-2008
BIR Ruling No. 1133-2018
OT- 053-2021
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ARMED FORCES AND POLICE SAVINGS AND LOAN ASSOCIATION, INC.
AFPSLAI Building, Capinpin Avenue
Camp General Emilio Aguinaldo
EDSA cor. Col. Bonny Serrano Road
Quezon City

Attention: ATTY. SADIRI R. DALIVA
Head, Legal Services Division

Gentlemen:

This refers to your letter dated April 2, 2014, requesting for a ruling regarding the issuance of a new Certificate Authorizing Registration (CAR) for the account of Sps. Kenny Te and Evelyn Te ("Sps. Te").

It is represented that sometime in June 2004, Centennial Savings Bank ("CSB"), then a savings bank majority owned by the Armed Forces and Police Savings and Loan Association, Inc. ("AFPSLAI") initiated the consolidation of ownership of the mortgaged real estate properties of Sps. Te covered by Transfer Certificate of Title (TCT) Nos. and after the latter failed to redeem the subject properties within the redemption period. Subsequently, after payment of the appropriate taxes (documentary stamp tax [DST] and capital gains tax [CGT]), Revenue District Office (RDO) No. 26 - Malabon City processed and issued CAR No. dated July 13, 2004 in favor of CSB. However, the consolidation process was stalled on account of CSB's failure to cause the required revalidation of the aforesaid CAR with RDO No. 26 - Malabon City until the time that CSB sold its share to Sterling Bank of Asia ("SBA") through a "Clean Balance Sheet" scheme sometime in the early part of August 2009 due to continuous financial losses in its operation. Under the said scheme, SBA will acquire selected assets and assume the outstanding liabilities of CSB except the deposit of AFPSLAI who is the majority owner of CSB.

On August 14, 2009, CSB assigned its remaining assets which are not part of the "Clean Balance Sheet" scheme as liquidating dividend by executing a Deed of Assignment (pursuant to liquidation) in favor of AFPSLAI. The aforesaid real estate properties of Sps. Te were among those assets that were assigned to AFPSLAI.

On October 12, 2011, CAR No. was issued revalidating CAR No. dated July 13, 2004. Thereafter, on November 11, 2011, AFPSLAI filed an Affidavit of Consolidation of Ownership involving the above-mentioned real properties with the Registry of Deeds of Malabon City (RD – Malabon City) on the basis of the Deed of Assignment (pursuant to liquidation) dated August 14, 2009, executed by CSB in favor of AFPSLAI. However, RD - Malabon City averred that the consolidation and/or transfer of ownership can only be consummated upon submission of a CAR that is duly issued under AFPSLAI's corporate name in order to establish its juridical status and interest over the said foreclosed properties.

Accordingly, on February 20, 2013, AFPSLAI requested RDO No. 26 - Malabon City through a letter addressed to then OIC Revenue District Officer, Bonifacio L. Caringal, seeking amendment of CAR No. dated October 12, 2011 to the effect that the same is issued in the name of AFPSLAI. Acting on the said request, RDO No. 26 - Malabon City advised AFPSLAI to elevate its concern and request for the issuance of a ruling on the matter if such amendment is legally tenable. Hence, this request.

In reply, please be informed that amendment of CAR No. dated October 12, 2011 to the effect that the same is issued in the name of AFPSLAI is without legal basis, for there are two (2) transactions involved in this case which requires the issuance of two (2) CARs, to *wit*:

(1) the consolidation of ownership of the mortgaged real estate properties of Sps. Te after the latter failed to redeem the subject properties within the redemption period, leading to the issuance of CAR No. dated July 13, 2004 which was subsequently cancelled by CAR No. dated October 12, 2011; and

(2) the Deed of Assignment (pursuant to liquidation) dated August 14, 2009 executed by CSB in favor of AFPSLAI, which requires the issuance of a new CAR in favor of the latter, after payment of the necessary taxes, if any.

The question now arises whether or not the Deed of Assignment (pursuant to liquidation) dated August 14, 2009 executed by CSB in favor of AFPSLAI, shall be subject to the payment of taxes. Pursuant to Section 8 of Revenue Regulations (RR) No. 06-08[1] dated April 22, 2008, individual shareholders shall recognize capital gains upon surrender of shares computed as excess of the cash and fair market value of property received over the cost of the investment in shares and that such gain shall be subject to the regular income tax rates, to *wit*:

> *"SECTION 8. Taxation of Surrender of Shares by the Investor Upon Dissolution of the Corporation and Liquidation of Assets and Liabilities of Said Corporation. - Upon surrender by the investor of the shares in exchange for cash and property distributed by the issuing corporation upon its dissolution and liquidation of all assets and liabilities, the investor shall recognize either capital gain or capital loss upon such surrender of shares computed by comparing the cash and fair market value of property received against the cost of the investment in shares. The difference between the sum of the cash and the fair market value of property received and the cost of the investment in shares shall represent the capital gain or capital loss from the investment, whichever is applicable. If the investor is an individual, the rule on holding period shall apply and the percentage of taxable capital gain or deductible capital loss shall depend on the number of months or years the shares are held by the investor. Section 39 of the Tax Code, as amended, shall herein apply in all possible situations.*
>
> *The capital gain or loss derived therefrom shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations."*

Thus, if the fair market value of the subject real properties received by AFPSLAI exceeds its cost of investment, it shall recognize a gain subject to the regular (graduated) income tax rates. Conversely, if the fair market value of the subject real properties received as liquidating dividends does not exceed the cost of its investment, no taxable gain will be recognized by AFPSLAI[2].

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[1] Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets.

[2] Section 256, RR No. 2, Income Tax Regulations; BIR Ruling No. 028-2002 dated July 22, 2002

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Moreover, no tax shall be imposed on the liquidating corporation's receipt of the shares surrendered by the shareholders because the transaction is not treated as a sale. In BIR Ruling No. 1133-2018 dated August 28, 2018, citing BIR Ruling No. 092-99 dated July 8, 1999, this Office ruled, *viz*:

> *"The transfer by the liquidating corporation of its remaining assets to its stockholders is not considered as a sale of these assets. Thus, a liquidating corporation does not realize gain or loss in partial or complete liquidation. [W. P. Fax & Sons Inc., Petitioner v. Commissioner of Internal Revenue, Respondent, 15 BTA 115; Jordan Petroleum Company, 13 AFTR 2d 1692 (227 F. Supp. 174); J.T.S. Brown & Son Company v. Commissioner of Internal Revenue, 10 TC 840] Hence, the transfer by Fundamental Development Corporation of its assets, i. e., one (1) parcel of land, to its controlling stockholders by way of liquidating dividends is not subject to the expanded creditable withholding tax imposed under Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, as last amended by Revenue Regulations No. 2-98 (BIR Ruling No. 059-90 dated April 17, 1990), and consequently, the same is not subject to the corporate income tax."*

Furthermore, in *Victoria Fernando vs. Sps. Lim*[3], the Supreme Court held that no tax shall be imposed on the liquidating corporation's receipt of the shares surrendered by the shareholders because the transaction is not treated as a sale. In the said case, the Court had the opportunity to discuss the nature of a liquidating dividend and its tax consequence, as follows:

> *"The share of each stockholder in the remaining assets of the corporation upon liquidation, after the payment of all corporate debts and liabilities, is what is known as liquidating dividend. In its interpretation of recent tax laws, the Bureau of Internal Revenue viewed the distribution of liquidating dividends not as a sale of asset by the liquidating corporation to its stockholder but as a sale of shares by the stockholder to the corporation or the surrender of the stockholder's interest in the corporation, in place of which said stockholder receives property or money from the corporation about to be dissolved. Thus, on the part of the stockholder, any gain or loss is subject to tax, while* ***on the part of the liquidating corporation, no tax is imposed on its receipt of the shares surrendered by the stockholder or transfer of assets to said stockholder because said transaction is not treated as a sale.***" (Citations omitted and emphasis supplied)

Accordingly, no tax shall be imposed on CSB on its receipt of shares surrendered by the stockholders or the transfer of assets to said stockholders because said transaction is not treated as a sale. Thus, CSB shall not be liable for income tax on the transfer of the subject real properties to AFPSLAI by way of liquidating dividends[4].

Furthermore, the DST imposed under Section 196 of the National Internal Revenue Code of 1997, as amended, shall not apply in transfers of real property as liquidating dividends to its remaining stockholders. Section 196 of the National Internal Revenue Code of 1997, as amended, provides:

> *"SEC. 196. Stamp tax on Deeds of Sale, Conveyances and Donations of Real Property. — On all conveyances, donations, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the government, whereby any land, tenement, or other realty sold shall be granted, assigned, transferred, donated or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such*

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[3] G.R. No. 176282, August 22, 2008.

[4] BIR Ruling Nos. 092-99 dated July 8, 1999 citing BIR Ruling No. 059-90 dated April 17, 1990; and 028-2002 dated July 22, 2002.

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purchaser or purchasers, or donee, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government the tax herein imposed shall be based on the actual consideration.

(a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed One thousand pesos (P1,000), Fifteen pesos (P15.00).

(b) For each additional One thousand pesos (P1,000) or fractional part thereof in excess of One thousand pesos (P1,000) of such consideration or value, Fifteen pesos (P15.00).

However, the above provision does not apply to transfers of property as return of capital. RR No. 26 further provides that conveyance of real property by a corporation without consideration to the owner of its capital stock is not subject to DST. Section 189 of RR No. 26 provides:

"Section 189. Conveyance by corporation to owner of all the capital – A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax."

In BIR Ruling No. 028-2002 dated July 22, 2002, this Office ruled that:

"Since the stockholders of Rose Packing Company, Inc. will receive upon its liquidation its assets consisting of the aforementioned land as liquidating dividends, they will thereby realize capital gain or loss. The gain, if any, derived by the individual stockholders consisting of the difference between the fair market value of the liquidating dividends and the adjusted cost to the stockholders of their respective shareholdings in the said corporation [Sec. 256, Income Tax Regulations] shall be subject to income tax at the rates prescribed under then Section 21(a) of the Tax Code, as amended by Executive Order No. 37. Moreover, pursuant to then Section 33(B) of the Tax Code, as amended, only 50% of the aforementioned capital gain is reportable for income tax purposes if the shares were held by the individual stockholders for more than twelve months and 100% of the capital gains if the shares were held for less than twelve months. Finally, this Office has ruled that the conveyance of real property in the form of liquidating dividends to the stockholders is not subject to documentary stamp tax under Section 196 of the Tax Code." (Underscoring ours)

Consequently, Section 196 of the National Internal Revenue Code of 1997, as amended, shall not apply to the distribution of assets as liquidating dividends. Therefore, the transfer of the subject real properties of CSB to AFPSLAI shall not be subject to DST.

It is, however, understood that this Ruling is never intended and shall not be construed as giving authority to the concerned Register of Deeds to effect transfer of the subject real properties in the name of AFPSLAI without the necessary certificate of authority to register issued by this Bureau. In this regard, this Ruling shall be presented to the RDO concerned in order for the latter to issue the CAR.

Please take note also that before the issuance of the CAR on the transfer of the subject real properties by CSB to AFPSLAI, CSB should first apply for the closure of its business due to cessation/termination before the RDO where it is registered.

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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