REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sections 24 (D) (1), 98, 99, 101, 173, 188, 196 and 199 of the National Internal Revenue Code of 1997, as amended;
Section 132 (e) of Republic Act (RA) No. 7653 and Section 66 of RA No. 6657;
BIR Ruling M-170-2021;
OT-061-2024
OCT 08 2024

BUREAU OF TREASURY
Ayuntamiento Building, Cabildo St cor. A. Soriano Avenue,
Intramuros, Manila 1002

Attention: **ROSALIA V. DE LEON**
Treasurer of the Philippines

EDUARDO ANTHONY G MARIÑO, III
Deputy Treasurer of the Philippines

Gentlemen:

This refers to your letter requesting for an exemption from the payment of National Taxes imposed on the transfer of the Comprehensive Agrarian Reform Program (CARP)-covered Central Bank – Board of Liquidators (CB-BOL) real properties as the disposition of the said properties to the National Government (NG) is by deed of assignment and not through sales transaction.

It is represented that CB-BOL, constituted pursuant to Section 132 (e) of Republic Act (RA) No. 7653 or the New Central Bank Act, ceased its operation on June 2018. The CB-BOL assigned its undisposed assets to the NG through the Bureau of Treasury (BTr). It was pointed out that these are *"gratuitous assignments"* effected through the execution of various Deeds of Assignment in an "as-is-where-is" basis.

It was stated that among those assigned to BTr are real properties covered under the CARP. These properties were yet to be titled in favor of the Republic of the Philippines or the State. The subject properties were grouped into two as stated in the BTr's letter dated April 26, 2023: (1) Deed of Assignment (DOA) between CB-BOL and the Republic of the Philippines (ROP) through the BTr, which pertains to forty-four (44) properties; and (2) DOA between CB-BOL and ROP through the BTr, which pertains to ten (10) properties possibly under CARP (not indicated in DOA).

The BTr asserts that said *"gratuitous assignments"* are not subject to Donor's Tax, Documentary Stamp Tax (DST), and Capital Gains Tax (CGT) for the following reasons:

a. Donor's Tax - Section 101 of the National Internal Revenue Code of 1997, as amended (Tax Code) provides that gifts made to or for use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any of its political subdivisions are exempted from payment of donor's tax. As the *"assignments"* are gratuitous in nature, not conducted for profit, and made pursuant to each of involved agency's

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functions and mandate, they may be exempted from the payment of Donor's Tax.

b. DST – Section 185 of Revenue Regulations (RR) No. 26 or the DST Regulation provides that conveyances without consideration are not subject to the imposition of DST. As the *"assignments"* are conveyances not involving profit or those entered into without consideration, they may be exempted from the payment of DST.

c. CGT – Section 66 of RA No. 6657 or the Comprehensive Agrarian Reform Law of 1988 provides that "transfer of ownership covered by CARP shall be exempted from taxes arising from capital gains." As the *"assignments"* involves the disposition of CARP-covered properties, they may be exempted from the payment of CGT.

Hence, the BTr requests for a confirmatory ruling that the *"assignments"* of CARP-covered CB-BOL properties are exempt from Donor's Tax, DST, and CGT as the disposition of the said properties to the NG is by deed of assignment and are not through sales transaction.

In reply, please be informed as follows:

The Central Bank – Board of Liquidators (CB-BOL)

The Bangko Sentral ng Pilipinas (BSP) was established in 1993 to function as an independent monetary authority in an aim to bring stability to money, banking and credit. The old Central Bank of the Philippines (CBP) was dissolved to enable the new monetary authority to begin with a clean financial slate. Not all assets or liabilities of the old CBP were transferred to and assumed by the BSP pursuant to Section 132 of the RA No. 7653 or the New Central Bank Act. Those assets and liabilities which were not identified to be transferred to and assumed by the BSP remained to be the assets and liabilities of the Central Bank which continued to exist as an entity, the Central Bank – Board of Liquidators (CB-BOL). The CB-BOL's function is to administer, dispose of, and liquidate all assets and liabilities not transferred to the BSP and retained by the Board. Section 132 thereof states that:

> **"Section 132. Transfer of Assets and Liabilities.-** Upon the effectivity of this Act, three (3) members of the Monetary Board, which may include the Governor, in representation of the Bangko Sentral, the Secretary of Finance and the Secretary of Budget and Management in representation of the National Government, and the Chairmen of the Committees on Banks of the Senate and the House of Representatives shall determine ***the assets and liabilities of the Central Bank which may be transferred to or assumed by the Bangko Sentral.*** xxxx xxxx xxxx
>
> The following guidelines shall be strictly observed in the determination of which assets and liabilities shall be transferred to the Bangko Sentral:
>
> xxxx xxxx xxxx
>
> (e) ***any asset or liability of the Central Bank not transferred to the Bangko Sentral shall be retained and administered, disposed of and liquidated by the Central Bank itself which shall***

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> ***continue to exist as the CB Board of Liquidators only for the purposes provided in this paragraph but not later than twenty-five (25) years or until such time that liabilities have been liquidated***: Provided, That the Bangko Sentral may financially assist the Central Bank of Liquidators in the liquidation of CB liabilities: Provided, finally, That upon disposition of said retained assets and liquidation of said retained liabilities, the Central Bank shall be deemed abolished."
>
> xxxx xxxx xxxx (Emphasis Supplied)

Pursuant to the aforementioned law, Executive Order (EO) No. 169 was issued on April 17, 1994 by then President Fidel V. Ramos to reiterate the continued existence of the old Central Bank as the CB-BOL and prescribed powers and functions of the Board as well as its Chairman. The Board was not created for profit or to engage in business. The old Central Bank continued to exist as a juridical entity, known as the CB-BOL, with the specific duty of administering disposing of, and liquidating its assets and liabilities not transferred to and assumed by the BSP. The said EO likewise authorized CB-BOL to perform such other corporate powers necessary to administer, dispose of, and liquidate the assets and liabilities retained by it and not transferred to or assumed by the BSP. Subsequent EOs issued were only for purposes of reconstituting the CB-BOL. The said Board ceased to function as the administrator and liquidator of the old Central Bank's assets and liabilities in 2018.

The Comprehensive Agrarian Reform Program (CARP)

The Comprehensive Agrarian Reform Program or the CARP was institutionalized through the enactment of RA No. 6657 or the Comprehensive Agrarian Reform Law of 1988 which aims to establish an equitable distribution and ownership of land with due consideration to just compensation for the farmers and to the improvement of agricultural productivity. The said law was mandated to be implemented and completed within ten (10) years from its effectivity or until 2008. It was extended for an additional five (5) years by RA No. 9700.

Section 66 of RA No. 6657 exempts from the payment of CGT all acts of transfer of ownership involving parcels of land identified to be under the CARP. The same section likewise exempts such acts from registration fees, and all other taxes and fees relating to the conveyance of said lands, to wit:

> **"SECTION 66. Exemptions from Taxes and Fees of Land Transfers.** – Transactions under this Act involving a transfer of ownership, whether from natural or juridical persons, ***shall be exempted from taxes arising from capital gains***. These transactions ***shall also be exempted from the payment of registration fees, and all other taxes and fees for the conveyance or transfer thereof;*** Provided, That all arrearages in real property taxes, without penalty or interest, shall be deductible from the compensation to which the owner may be entitled." (Emphasis Supplied)

Donor's Tax

A donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it. On the part of the donor, it is an exercise of one's

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generosity.[1] In simpler terms, it is an act of a voluntary transfer of property by one to another without any consideration or compensation therefor.[2]

The essential elements of donation are as follows: (a) the essential reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; and (c) the intent to do an act of liberality or animus donandi.[3] Article 749 of the Civil Code of the Philippines further requires that the donation of a real or immovable property must be made in a public document and that the acceptance thereof be made in the same deed or in a separate public instrument. If the said acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instrument.

As for taxation, Section 98 in relation to Section 99 of the Tax Code provides that transfers by any person, resident or non-resident, by gift, of property, real or personal, are generally subject to six percent (6%) donor's tax computed on the basis of the total gifts in excess of Two Hundred Fifty Thousand Pesos (P250,000.00) exempt gift made during the calendar year must be paid. Sections 98 and 99 of the Tax Code read:

"CHAPTER II - DONOR'S TAX

Section 98. Imposition of Tax. –

(A) There shall be levied, assessed, collected and paid upon the transfer by any person, resident or non-resident, of the property by gift, a tax, computed as provided in Section 99.

(B) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 99. Rate of Tax Payable by Donor. –

(A) In General. – The tax for each calendar year shall be six percent (6%) computed on the basis of the total gifts in excess of Two hundred fifty thousand pesos (PhP250,000) exempt gift made during the calendar year. xxxx xxxx xxxx"

Further, certain gifts are exempt from donor's tax if given to qualified institutions or donee such as, among others, those made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government in accordance with the conditions set under *Section 101*[4] of the Tax Code.

Documentary Stamp Tax

Documentary stamp taxes (DST) are levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal

[1] Sps. Eduarte vs CA and Calapine, G.R. No. 105944, February 09, 1996.
[2] Abello, Concepcion, Regala, and Cruz vs CIR and CA, G.R. No. 120721, February 23, 2005.
[3] Heirs of Rosendo Sevilla Florencio vs Heirs of Teresa Sevilla De Leon, G.R. No. 149570, March 12, 2004.
[4] Sec. 101. Exemption of Certain Gifts.

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relationships through the execution of specific instruments.[5] Section 173 of the Tax Code states:

> **"Section 173.** ***Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes*** prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: xxxx xxxx xxxx" (Emphasis Supplied)

Documents subject to DST, includes, among others, deeds or instruments involving conveyances, donations, or sale of real properties as stated in Section 196 of the same Code, to wit:

> **"Section 196.** ***Stamp Tax on Deeds of Sale, Conveyances and Donation 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 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: xxxx xxxx xxxx" (Emphasis Supplied)

Section 199 of the same Code provides for certain documents exempted from the imposition of DST including those pertaining to *"contracts, deeds, documents and transactions related to the conduct of business of the BSP"*.

Capital Gains Tax

Capital Gains Tax (CGT) is a tax imposed upon the seller based on his or her presumed gain realized from the sale, exchange, or other disposition of capital assets located in the Philippines, including pacto de retro sales and other forms of conditional sale.

Section 24 (D) (1) of the Tax Code imposes a final tax of ***six percent (6%)*** upon the capital gains presumed to been realized from the sale, exchange, or other disposition of real property located in the Philippines. The said 6% CGT is computed on the basis of the ***gross selling price or current fair market value, whichever is higher.*** Sections 24 (D) (1) reads:

[5] Antam Pawnshop vs CIR, G.R. No. 167962, September 19, 2008.

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"Section 24. Income Tax Rates. –

xxxx xxxx xxxx

(D) Capital Gains from Sale of Real Property. –

(1) In General. – The provisions of Section 39(B) notwithstanding, ***a final tax of six percent (6%) based on the gross selling price or current fair market value*** *as determined in accordance with Section 6(E) of this Code,* ***whichever is higher,*** is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or -controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer." (Emphasis supplied)

Certain transactions were executed without consideration and hence not subject to CGT. This includes, among others, the ***reconveyance*** of a real property by virtue of a *Court Decision*[6]. Some transactions, however, can be deemed a sales transaction, hence subject to CGT. ***Dacion en Pago*** is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of obligation.[7] It is regarded as a special mode of payment wherein the debtor offers a particular thing or property to the creditor who accepts such for the settlement of a particular obligation or debt.[8] The Supreme Court viewed this as a transaction which partakes the nature of sale - i.e., the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt.[9]

Application

In applying the foregoing, the various DOAs executed by the CB-BOL as **ASSIGNOR** in favor of the ROP, as represented by the BTr, as **ASSIGNEE**, cannot be considered a gift or donation as these were executed ultimately as a form of partial settlement of the CB-BOL's obligations or debts owed to the NG. Most of the DOAs include a provision stating that it was executed ***"xxxx ... and for the partial settlement of the ASSIGNOR's obligation xxxx... the said ASSIGNOR does hereby ASSIGN, TRANSFER, CONVEY and DELIVER in a manner absolute and irrevocable xxxx..."*** while some DOAs contain a provision stating that ***"By this assignment, the liabilities of the ASSIGNOR to the ASSIGNEE shall be reduced by an amount equivalent to xxxx..."***. Both provisions, as worded, indicate that the assignments were not at all gratuitous, as they indicate a transmission of the ownership of a thing by the debtor to

[6] BIR Ruling No. OT-0371-2020, dated July 3, 2020.
[7] Arturo A. Dacquel vs. Spouses Ernesto Sotelo and Flora Dacquel-Sotelo, represented by their Attorney-In-Fact, Imelda Sotelo, GR No. 203946, August 04, 2021.
[8] Ibid.
[9] Dao Heng Bank, Inc., Now Banco De Oro Universal Bank vs. Sps. Lilia And Reynaldo Laigo, Gr No. 173856, November 20, 2008.

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the creditor as an accepted equivalent of the performance of an obligation or settlement of a debt. Hence, the DOAs cannot fall within the ambit of Sections 98 and 99 of the Tax Code.

The DOAs cannot also be taken as a deed or contract related to the conduct of business of the BSP for it to be exempted from DST as stated under Section 199 (l) of the same Code. The BSP and CB-BOL are separate legal entities. The CB-BOL is not under the BSP. Another view, on the contrary, defeats the purpose of establishing an independent monetary authority premised upon a clean financial slate.

As already stated, the DOAs contain a provision that shows that the penultimate goal of the assignment is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an obligation or settlement of a debt. The intent to transfer ownership is supported by the fact that the letter of request for exemption indicated that the BTr is already coordinating with the concerned agencies for the annotation and eventual titling. The abovementioned provisions make the DOAs similar to a *Dacion en Pago*, which partakes the nature of a sale.

Therefore, the DOAs, being in the nature of a *Dacion en Pago*, should have been subject to the payment of CGT and DST. However, since Section 132 (e) of RA No. 7653, or the New Central Bank Act, does not limit the manner of the disposition of properties by CB-BOL to those which will generate revenue for the NG, it is not expected to make a profit or to engage in business. Hence, by transferring its assets through the DOAs to the NG or ROP or the State as represented by the BTr, it is merely performing its mandated functions as a national government entity under EO No. 169 s. 1994, which was issued in accordance with Section 132 (e) of RA No. 7653.

Since the CB-BOL is deemed to be performing a governmental function in the transfer of its assets to the NG or ROP or the State, even if such acts contemplate a partial settlement of its obligation, the said DOAs are not subject to CGT and DST. It does not matter whether the properties transferred were under the CARP or not. Further, Section 132 (e) of RA No. 7653 provides that the CBP shall continue to exist as the CB-BOL until all retained assets or liabilities, or those not transferred to the BSP, has been administered, disposed of, and liquidated. Therefore, the CBP-BOL, being the CBP, is similarly entitled to the tax exemptions provided to the CBP[10] under RA No. 265[11]. As such, the DOAs transferring real properties from CB-BOL to the Republic of the Philippines are exempt from taxes.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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[10] BIR Ruling No. M-170-2021 dated October 4, 2021.
[11] An Act Establishing the Central Bank of the Philippines, Defining its Powers in the Administration of the Monetary and Banking System, Amending the Pertinent Provisions of the Administrative Code With Respect to the Currency and the Bureau Of Banking, and for Other Purposes.