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

Proclamation No. 50, series of 1986, as amended; Executive Order No. 323
BIR Ruling No. 474-2017
CT- 081-2021
MAR 18 2021

LAW DEPARTMENT
CITY GOVERNMENT OF MAKATI
J.P. Rizal Street, Brgy. Poblacion, Makati City 1200

Attention: **ATTY. MICHAEL ARTHUR T. CAMIÑA**
City Legal Officer

Gentlemen:

This refers to your letter dated October 7, 2019 requesting for exemption from the payment of capital gains tax on the sale of two (2) parcels of land between the National Government of the Republic of the Philippines through the Privatization and Management Office (PMO) and the City Government of Makati pursuant to Section 34 of Proclamation No. 50[1], as amended[2].

It is represented that the National Government of the Republic of the Philippines (GOP), through the PMO[3] sold two (2) parcels of land located in Makati City, with a total area of 4,435 square meters, covered by Transfer Certificate Title (TCT) No. and TCT No. , to the City Government of Makati (CGM) as evidenced by the Deed of Absolute Sale dated March 12, 2019. These parcels of land will be used in the Subway Project through the Public-Private Partnership as the city's share in the said infrastructure and development project.

Revenue District Office (RDO) No. 49 requested the presentation of a tax exemption certificate or ruling by exempt individuals and entities pursuant to Revenue Memorandum Circular (RMC) No. 8-2014 before the Certificate Authorizing Registration (CAR) may be issued since CGM claimed that the transaction was tax exempt under Section 34 of Proclamation No. 50, as amended. CGM argued that in their previous transactions dealing with properties administered by PMO, the presentation of BIR Ruling No. 403-2012, which was also presented in this case, would suffice in their claim of exemption from capital gains tax, however, RDO No. 49 insisted on their position. Hence, this request for ruling.

In reply, please be informed that Sec. 1 and Sec. 4 of Proclamation No. 50 state:

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[1] Dated December 8, 1986.
[2] Executive Order No. 323 dated December 6, 2000, entitled as *"Constituting an Inter-Agency Privatization and Management Office (PMO) under the Department of Finance for the Continuing Privatization of Government Assets and Corporations."*
3 As established by Executive Order No. 323.

CT- 081-2021
MAR 18 2021

*"**SEC. 1. STATEMENT OF POLICY.** — It shall be the policy of the State to promote privatization through an orderly coordinated and efficient programs for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government-owned or controlled corporations which have been found unnecessary or inappropriate for the government sector to maintain."*

*"**SEC. 4. RESPONSIBILITIES AND OBJECTIVES.** – It shall be the duty and responsibility of the Committee to use the powers granted to it under this Proclamation to achieve the objectives of (a) divesting to the private sector in the soonest possible time through the appropriate disposition entities, those assets with viable and productive potential as going concerns, taking into account where appropriate the implications of such transfers on sectoral productive capacities and market limitations, and (b) disposing of such other assets as may be transferred to it, generating the maximum cash recovery for the National Government in the process. These objectives are to be pursued within the context of furthering the national economic recovery through a strengthened and revitalized private enterprise system"*

While Section 34 of Proclamation No. 50, as amended, provides the following:

*"**SEC. 34. EXEMPTION FROM TAXES, FEES AND OTHER CHARGES.** – The provisions of any law to the contrary notwithstanding, the Trust as well as the corporations and asset held by it, **shall be exempt from all taxes, fees, charges, imposts and assessments arising from or occasioned by the passing of title over such corporations or assets from the government institutions to the Trust and/or from the Trust to a private acquisitor or buyer imposed by the National Government or any subdivision thereof including but not limited to stock transfer taxes, capital gains taxes, documentary stamps, registration fees and the like:** Provided, that in case the said government institutions acquired the said assets by foreclosure, the non-payment of similar taxes, fees, charges, imposts, and assessments shall not be a bar to the consolidation of title in the foreclosing institutions and the subsequent passing of title to the Trust or the corporations held by the Trust.*

The sale or transfer of such corporations or assets shall not be enjoyed or hindered by the existence of any liens by way of taxes, charges or other assessments in favor of the government at the time of sale or transfer; Provided, that the proceeds from such sale or transfer shall be subject to a tax lien and first be applied to satisfy such obligations secured by said liens." (Emphasis supplied)

Under the above quoted provision, the Asset Privatization Trust (now PMO) as well as the corporations and assets held by it, shall be exempt from all taxes, fees, charges, imposts, and assessments arising from or occasioned by the passing of title over such corporations or assets from the government institutions to the Trust and/or from the Trust to a private acquisitor or buyer imposed

CT-081-2021
MAR 18 2021

by the National Government or any subdivision thereof.[4] Thus, the PMO is exempt from the payment of CGT and DST on the Deed of Absolute Sale dated March 12, 2019 executed by and between the GOP, through the PMO, and the CGM.

Please take note however that the PMO's exemption from Documentary Stamp Tax (DST) is subject to the provisions of Section 173 of the National Internal Revenue Code of 1997, as amended, which states that:

> "***SEC. 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:* ***Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.***"

Therefore, the CGM, which does not enjoy the same tax exemption privilege, shall be the one liable for the payment of the DST due on the said transaction.

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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KI-FR-19-1543

Copy furnished:

Regional Director
Revenue Region No. 8A-Makati City
Revenue District Officer
Revenue District Office No. 49- North Makati City

4 BIR Ruling No. 474-2017 dated October 4, 2017.