January 14, 2019

BIR RULING NO. 106-19

Articles 1624 and 1475 of the New Civil Code; Revenue Regulations (RR) No. 9-2012; BIR Ruling No. 290-2013; BIR Ruling No. 444-2013

Castillo Bravo & Associates
No. 4 Hectan Commercial Center
Brgy. Halang, Calamba City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 13, 2017, requesting on behalf of your client, **BBB**, for confirmation that the assignment of right over a Certificate of Sale covering a foreclosed real estate property is not subject to capital gains tax (CGT) or expanded withholding tax (EWT), and that the taxes on the sale shall be due only after the lapse of the one (1) year redemption period when ownership of the property can be consolidated in the name of your client, the Assignee.

Background:

On December 24, 2008, as security for the loan obligation of, and credit accommodation to, Brand Channel, Inc. **("Brand")**, Spouses CCC and DDD **("Sps. CCDD")** executed in favor of Rizal Commercial Banking Corporation **("RCBC")** a Real Estate Mortgage (REM) constituted upon a parcel of land, including the improvements thereon, located in Cabuyao, Laguna, covered by and more particularly described in Transfer Certificate of Title (TCT) No. T-474483, which mortgage was duly annotated in the said Title. Thereafter, RCBC transferred and assigned to Philippine Asset Growth One, Inc. **("PAGOI")**, a corporation duly organized and existing under the laws of the Republic of the Philippines engaged in the purchase, management, development, and sale of real estate assets, all its interests, rights, claims, causes of action, and all obligations arising out of or in connection with, or directly or indirectly related to, the accounts of Brand and Sps. CCDD.

For failure of Brand to pay its loan obligations to RCBC/PAGOI, the property covered by the REM was foreclosed through an extrajudicial foreclosure proceedings conducted by the Office of the Ex-Officio Sheriff of Biñan, Laguna, docketed as EJF No.

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2015-1465. As a result of the extrajudicial foreclosure proceedings, the property was sold at public auction in favor of PAGOI, and pursuant thereto, the Office of the Ex-Officio Sheriff of Biñan, Laguna, issued a Certificate of Sale on August 08, 2016 in favor of PAGOI as the winning bidder. Said Certificate of Sale was registered and annotated on TCT No. T-474483 on September 16, 2016 as Entry No. 2016026029.

On June 21, 2017, while still within the one (1) year period within which Sps. CCDD can exercise their right of redemption, a Deed of Assignment was executed by and between PAGOI and BBB wherein all the rights and interests of PAGOI in the Certificate of Sale were sold, ceded, transferred, and conveyed to BBB for a consideration of _____ Pesos (P_____).

Sps. CCDD failed to redeem the mortgaged property within one (1) year from the date of registration of the Certificate of Sale. Thus, BBB now wants to consolidate the ownership of the property in her name.

In reply, please be informed that Articles 1624 and 1475 of the New Civil Code of the Philippines states that:

> *"Article 1624. An assignment of credits and other incorporeal rights shall be perfected in accordance with the provisions of article 1475."*
>
> *"Article 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.*
>
> *From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts."*

In view thereof, there are two transactions in this case — the foreclosure sale and the assignment of rights. There can be no uncertainty that assignment of rights is perfected from the moment the parties have agreed upon a determinate thing, *i.e.*, the object of the contract and a price certain. Thus, delivery of the thing sold is not necessary for the perfection of the contract. In the case at bar, the Deed of Assignment was executed by PAGOI in favor of BBB whereby the former had sold, ceded, transferred, and conveyed to the latter all its rights and interests over the Certificate of Sale for and in consideration of _____ (P_____) although at that time, delivery cannot be effected yet because the redemption period has not yet lapsed. However, from that time on, BBB is subrogated to the rights of PAGOI to have the title to the property consolidated under her name where it not for the redemption period.

Accordingly, the Deed of Assignment executed by PAGOI in favor of BBB shall be treated as a separate contract of sale notwithstanding that the former had only inchoate rights over the subject property and the latter merely steps into the shoes of the assignor without acquiring a better right than what the assignor had in the property to which the assigned right pertains. Upon the expiration of the redemption period, PAGOI's inchoate rights and interests over the foreclosed property had ripened to a right of ownership and

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possession over the same. Thus, the consolidation of ownership by BBB over the foreclosed property shall effectively convey ownership of the property to her from PAGOI.

Wherefore, the Deed of Assignment dated June 21, 2017 executed by PAGOI in favor of BBB, over the said property is subject to the following:

1. Creditable withholding tax (CWT) imposed under Section 57 and Revenue Regulations (RR) No. 2-98, as amended;

2. Value Added Tax (VAT) imposed under Section 106 of the National Internal Revenue Code of 1997, as amended, and RR 16-05, as amended;

3. Documentary stamp tax (DST) imposed under Section 196 of the National Internal Revenue Code of 1997, as amended; and

4. DST on the notarial acknowledgment pursuant to Section 188 of the National Internal Revenue Code of 1997, as amended.

The CWT return shall be filed and the said tax shall be remitted to the Bureau within ten (10) days following the end of the month after such assignment while the VAT must be paid to the Bureau on or before the 20th day of the month following such assignment. Moreover, the DST return shall be filed and the said tax be paid to the Bureau within five (5) days after the close of the month when the taxable document was made and signed and the taxes due thereon shall be paid at the same time the return is filed.

With regard to the time of payment of CGT and DST on the foreclosure sale, Section 2 of Revenue Regulations (RR) No. 9-2012, dated May 31, 2012, provides:

> *"Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property within the Applicable Statutory Redemption Period. —*
>
> *In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the capital gains tax (CGT) imposed under Section 24(D)(1) and 27(D)(5) of the Tax Code in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the value added tax (VAT) imposed under Section 106 of the Tax Code and RR 16-05, as amended; and the documentary stamp tax (DST) imposed under Section 196 of the Tax Code shall become due.*
>
> *The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from expiration of the applicable statutory*

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redemption period; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period.

If the property sold through involuntary sale is under the circumstances which warrant the imposition of VAT, the said tax must be paid to the Bureau by the VAT-registered owner/mortgagor on or before the 20th or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes.

The DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.

The CGT/CWT/VAT & DST shall be based on whichever is higher of the consideration (bid price of the highest bidder) or the fair market value or the zonal value as determined in accordance with Section 6(E) of the Tax Code."

Based on the foregoing, CGT and DST returns shall be filed after the registered owner failed to redeem his auctioned property within the applicable statutory redemption period. The CGT return shall be filed and the said tax shall be remitted to the Bureau within thirty (30) days from expiration of the applicable statutory redemption period, while the DST return shall be filed and the said tax be paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.

Upon presentation of the CWT, VAT, CGT, and DST returns duly validated by an authorized agent bank (AAB) and other documents evidencing full payment of the taxes due, the RDO concerned shall issue the Certificate Authorizing Registration (CAR) in favor of the assignee, BBB, as the successor-in-interest of the highest bidder, PAGOI.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it is disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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