January 14, 2019

BIR RULING NO. 108-19

Sections 27 (D) (5) & 196, 1997 Tax Code,
as amended

National Power Corporation
Quezon Avenue corner BIR Road
Diliman, Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 4, 2014 requesting exemption from payment of capital gains tax (CGT) and documentary stamp tax (DST) in connection with the Memorandum of Agreement (MOA) executed between the National Power Corporation (NPC) and the Power Sector Assets and Liabilities Management Corporation (PSALM) in which the PSALM agreed to reconvey to NPC the ownership of the NPC Head Office Building and land situated in BIR Road, Diliman, Quezon City.

Background

The NPC acquired the subject property sometime in 1980s and uses the same as its principal place of business. In 2001, Republic Act (RA) No. 9163 ("Electric Power Industry Reform Act" or EPIRA) was enacted to restructure the power industry. Said law created the PSALM to take ownership of the generation assets, among others, of NPC for privatization purposes, except for those assets used in the operation of the Small Power Utilities Group (SPUG) for missionary electrification. The following are the relevant provisions of the EPIRA:

> *"Sec. 47. NPC Privatization. — Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contract of NPC shall be privatized in accordance with this Act. x x x"*
>
> *Sec. 49. Creation of Power Sector Assets and Liabilities Management Corporation. — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation" hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. x x x"*

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Sec. 70. Missionary Electrification. — Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC."

In 2010, ownership of the NPC Head Office building and land was inadvertently transferred to PSALM supposedly on the basis of the pertinent EPIRA provisions. Notwithstanding the transfer, NPC continues to hold its principal office at the NPC building and its premises. The arrangement is necessary because NPC's SPUG plants are located in numerous far-flung islands of the country. On the other hand, PSALM also uses part of the said property as office for a number of its departments. The property is also the site of the head office of the National Transmission Corporation (Transco), which is a wholly-owned subsidiary of PSALM and the National Grid Corporation of the Philippines (NGCP), which is the concessionaire of Transco's transmission lines.

Inasmuch as NPC continues to perform its mandate of missionary electrification, among others, and thus, needs a principal office to manage its SPUG operations, it requested PSALM to return ownership of the Head Office Building and land. NPC contended that the Head Office is a vital asset in its SPUG operation as it is where the central planning of the SPUG operations are done and where the administrative support groups of all SPUG plants hold office.

In the recent review of assets transferred from NPC to PSALM, the Board of Directors of both corporations, decided to return to NPC the ownership of the Head office and land underlying the same except for certain portions that will be retained by PSALM for its own use (including those occupied by Transco and NGCP). In order to reconvey a portion of the Head Office Building and land to NPC, the parties executed a Memorandum of Agreement dated June 23, 2014, based on the following premises:

"xxx xxx xxx

*Whereas, the joint Review Committee (BRC) * of NPC and PSALM, convened on 25 November 2011, noted that NPC needs a place where it can conduct the administration of its remaining functions and mandate in connection with missionary electrification;*

Whereas, NP Board Resolution No. 2011-42 was issued stating that "the joint BRC decided that the NPC Head Office where the current NPC building and its associate facilities are situated should remain with NPC, minus those occupied by NGCP and System Operations";

Whereas, the Joint BRC further instructed both NPC and PSALM

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Managements to make a determination of the metes and bounds and to make the necessary changes in the title to reflect the boundaries that should remain with NPC accordingly";

xxx xxx xxx

NOW, THEREFORE, for and in consideration of the foregoing, the parties hereby agree as follows:

Section 1. PSALM hereby assigns, transfers, and conveys to NPC ownership of a certain parcel of land, including all buildings, structures and other improvements thereon, situated in Diliman, Quezon City, which is more specifically described based on NPC Survey, as follows:

A parcel of land (Lot No. R.P. 3-B-3-A-1-A-2-B-5-A-2 of Plan _____, being a portion of Lot No. R.P. 3-B-3-A-1-B-2-B-5-A of the subdivision plan Bsd-04-000455) situated in the District of Diliman, Quezon City. Bounded on the Northwest (NW), along lines 1 to 4 by Lot No. R.P. 3-B-3-A-1-A-2-B-5-A-1 of the same subdivision plan, on the Northeast (NE), along lines 4 to 7 by Lot No. R.P. 3-B-3-A-1-A-2-B-1 of the subdivision plan Bsd-04-000273, on the Southeast (SE), along line 7 to 8 by Lot No. R.P. 3-B-3-A-1-A-2-B-5 of the subdivision plan Bsd-04-000455, and along lines 8 to 20 by Lot No. R.P. 3-B-3-A-1-A-2-B-5-A-3 of the same subdivision plan, and on the Southwest (SW), along line 20 to 1 by Lot No. R.P. 3-B-3-A-1-A-2-B-5-J of the subdivision plan Bsd-04-000455. Beginning at a point marked "1" on plan being N 17 deg 02' E, 667.21 m., from BLLM 7 of Quezon City, thence:

LINE	BEARING	DISTANCE
1-2	N 54 deg 55' E	97.79 m.
2-3	N 13 deg 42' E	13.76 m.
3-4	N 55 deg 09' E	58.27 m.
4-5	S 37 deg 30' E	33.52 m.
5-6	S 40 deg 45' E	90.46 m.
6-7	S 43 deg 39' E	75.63 m.
7-8	S 39 deg 32' W	43.11 m.
8-9	N 34 deg 41' W	15.63 m.
9-10	N 25 deg 26' W	76.53 m.
10-11	S 54 deg 24' W	87.47 m.
11-12	S 35 deg 15' E	30.05 m.
12-13	S 52 deg 39' W	12.18 m.
13-14	N 59 deg 03' W	0.17 m.
14-15	S 79 deg 47' W	1.55 m.
15-16	S 08 deg 18' W	2.90 m.
16-17	S 19 deg 29' E	0.56 m.
17-18	S 54 deg 59' W	39.90 m.
18-19	N 33 deg 31' W	3.29 m.

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19-20	S 54 deg 51' W	3.06 m.
20-1	N 35 deg 06' W	139.69 m.

Containing an area of TWENTY FOUR THOUSAND TWO HUNDRED THREE (24,203) SQUARE METERS, more or less."

Based on the above representations, you now request confirmation that the reconveyance by PSALM to NPC of the NPC Head Office Building and land is not subject to the CGT and DST.

We reply as follows:

Capital Gains Tax/Creditable Withholding Tax

The transfer of the NPC Head Office Building and land is not a taxable sale, barter or exchange being contemplated under the provisions of the 1997 Tax Code, as amended, since the transfer of the NPC Head Office Building and land from PSALM to NPC was made purposely to remedy a situation where a previous liberal and sweeping application of the EPIRA provisions inadvertently divested NPC of an asset critical for the effective management of its SPUG operations and remaining mandate under the EPIRA. The MOA envisions a reconveyance of land from one government-owned and controlled corporation to another to enable the latter to effectively and efficiently perform its mandate under the EPIRA. Further, PSALM will not receive any consideration in exchange for the transfer. Thus, the transfer by PSALM to NPC of the NPC Head Office Building and land, without any monetary consideration, is neither subject to CGT nor creditable withholding tax.

Documentary Stamp Tax

The MOA executed by PSALM and NPC to effect the transfer of the NPC Head Office Building and land is likewise not subject to documentary stamp tax imposed under Section 196 of the Tax Code of 1997, as amended, considering that there is no sale, grant, assignment, conveyance or transfer contemplated under Section 196 of the Tax Code of 1997. [1] However, the notarial acknowledgement on the Deed of Confirmation is subject to the documentary stamp tax under Section 188 of the same Code.

This will, therefore, serve as authority for the concerned Revenue District Officer to issue the corresponding Certificate Authorizing Registration (CAR) for the transfer of the NPC Head Office Building and land in the name of the NPC.

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,

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

Footnotes

1. *Commissioner of Internal Revenue vs. La Tondeña Distillers, Inc.*, G.R. No. 175188 dated July 05, 2015.

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