September 11, 2018

BIR RULING NO. 1203-18

Revenue Regulations No. 5-2000

SGV & Co.
6760 Ayala Avenue
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 29, 2013 filed on behalf of your client, **Tokyo Construction Co., Ltd.** ("Tokyu," for brevity), requesting for the revalidation of Tax Credit Certificate ("TCC") No. 200600000137 in the amount of PhP_____ pursuant to the provisions of Revenue Memorandum Order ("RMO") No. 15-06 dated July 17, 2006.

It is represented that:

1. On May 19, 2003, Mitsubishi Corp., Tokyu, AM Oreta & Co., Inc. & BF Corporation, operating as an unincorporated consortium ("MTOB"), was issued TCC No. 024151 in the amount of PhP_____ pursuant to the decision of the Court of Tax Appeals ("CTA") in CTA Case No. 6037 dated November 11, 2002.

2. Pursuant to Department of Finance (DOF) Order No. 20-06, the said TCC was revalidated and as a result, TCC No. 200600000089 was issued on December 29, 2006 in the amount of PhP_____.

3. A request for the transfer of 3/4 value of the TCC No. 200600000089 was made. In a letter dated October 3, 2005, the BIR allowed the request of MTOB for the transfer of the 3/4 value of the TCC on the condition that MTOB shall deposit in escrow the remaining 1/4 value of the TCC or the

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amount of PhP_____.

4. On May 19, 2006, the three parties, Mitsubishi Corp., Tokyu and AM Oreta & Co., Inc., entered into a Memorandum of Agreement (MOA) for the disposition of the remaining 1/4 value of the TCC. Under the MOA, the parties agree to deposit or cause said TCC covering the 1/4 portion of the original amount to be held in escrow in Equitable PCI Bank, subject to the final determination of the ownership of the remaining 1/4 value of the TCC.

5. Pursuant to the MOA, the three parties entered into an Escrow Agreement with Equitable PCI Bank on June 19, 2006. Under the Escrow Agreement, the TCC shall be delivered upon presentation to the escrow agent of the written instruction or order from the BIR, through the Deputy Commissioner for Legal Services or the Commissioner of Internal Revenue, or any court, specifically declaring as to whom the Escrow Deposit should be released. Further, the Escrow Agreement shall not, for any reason, be terminated nor the Escrow Deposit be withdrawn, by any party/person, without the required written instruction or order from the BIR or any court of competent jurisdiction.

6. On February 2, 2007, MTOB assigned 3/4 of the amount of TCC No. 200600000089 in the amount of PhP_____. On the other hand, the BIR issued TCC No. 200600000137 on March 9, 2007 representing the 1/4 value of the remaining TCC in the amount of PhP_____. The TCC No. 200600000137 has a validity period of until May 19, 2008.

7. On November 28, 2013, the escrow agent BDO (formerly Equitable PCI Bank) released the TCC No. 200600000137 in the amount of PhP_____ to Tokyu on the basis of the "Joint Motion for Judgment Based on Compromise Agreement" dated May 27, 2013 between BF Corporation and Tokyu under CA-G.R. No. 97777 (Civil Case No. 66060).

8. While the TCC No. 200600000137 amounting to PhP_____ is valid only until May 19, 2008, the escrow agent released the TCC to Tokyu only on November 28, 2013, or more than five (5) years after expiration of the TCC.

In connection therewith, you are now requesting for a revalidation of TCC No. 200600000137 amounting to PhP_____.

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We reply, as follows:

Section 5 of Revenue Regulations (RR) No. 5-2000 dated July 19, 2000 provides that any TCC which remains unutilized after five (5) years from date of issue shall, unless revalidated before the end of the fifth year, be considered invalid. The revalidated TCC shall be valid for a period of five (5) years from the date of issue. However, a TCC may be revalidated only prior to the expiration of its validity period. Nevertheless, in exceptional circumstances, a TCC remains valid even after its validity period, and consequently, the BIR allowed its revalidation even after the expiration date.

In BIR Ruling DA-330-03 dated June 10, 2003 where several taxpayers applied for replacement of their TCCs even after the 5-year revalidation period provided by law, We gave due course to the application since the failure to revalidate the TCCs was not due to their own fault. We said:

> ". . . the three taxpayers requested for cash conversion of their issued TCCs as early as 1996 and 1997. For reasons unknown to the taxpayers, no action was made on these requests. Incidentally, the TCCs were at the custody of the Bureau of Internal Revenue. For this reason, the TCCs were not revalidated not because of their own fault but due to the negligence of the BIR office in charge of processing their request for conversion of said TCCs to cash.
>
> To mention, the TCCs of FCMI and CCI were returned to them after the prescribed 5-year period for revalidation. In the case of BHI, its TCC was allegedly lost while in the custody of the Bureau."

Moreover, a TCC retained its validity despite the fact that it was not timely revalidated as it was impossible for the owner thereof to request for revalidation for the reason that the TCC was lost while in the custody of the BIR. (BIR Ruling DA-206-05 dated April 25, 2005). The revalidation of expired TCCs is also allowed on the grounds of equity and fair play. (BIR Ruling DA-(C-019) 093-08 dated July 30, 2008)

It must be noted, however, that in the above cases, the failure to revalidate the TCC was not due to the fault of the owner but caused either by the negligence of the BIR personnel or due to reasons beyond the control of the owner. In the instant case, the BIR could not have caused the expiration of the TCC because it did not have physical or constructive custody of the said TCC. It must be noted that the BIR was not a party to the MOA nor to the Escrow Agreement entered among the parties. While the escrow agreement provides that it shall not be terminated nor the Escrow Deposit be withdrawn without the required written instruction or order from the BIR or any court of competent jurisdiction, it must be remembered that there was a civil case pending before the Regional Trial Court (RTC) of Pasig City involving the parties to the Consortium. The reason for putting the 1/4

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value of the TCC in escrow was to preserve it pending determination by proper authority as to the real owner thereof. Considering that there was already a case filed involving the parties, the BIR was not the proper authority to order the release of the escrow but the court handling the case. This was actually the case when the escrow agent BDO, on November 28, 2013, released TCC No. 100600000137 in the amount of PhP_____ to Tokyu on the basis of the "Joint Motion for Judgment Based on Compromise Agreement" dated May 27, 2013 between BF Corporation and Tokyu under CA-G.R. No. 97777 (Civil Case No. 66060). Tokyu and the other parties are presumed to know that the TCC would expire and they should have asked for a leave of court for the provisional release of the TCC for the purpose of revalidating it with the BIR. This they failed to do and they should not be allowed to shift the blame to BIR.

Accordingly, your request to revalidate the TCC No. 200600000137 amounting to PhP_____ is hereby denied.

Please be guided accordingly.

Very truly yours,

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

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