November 16, 2018

BIR RULING NO. 1367-18

Section 24 (D) (1) of the NIRC of 1997, as amended; BIR Ruling No. 351-2013

Land Bank of the Philippines
Field Legal Services
2/F LBP Bldg., Km. 5, Betag,
La Trinidad, Benguet

Attention: *AAA*

Gentlemen :

This refers to your letter dated July 14, 2016 requesting for a BIR ruling exempting the Deed of Reconveyance executed by the Land Bank of the Philippines ("LBP") in favor of Spouses BBB and CCC ("Sps. BBB/CCC" or "Plaintiffs") from the payment of Capital Gains Tax (CGT) and Documentary Stamp Tax (DST).

Background:

Sps. BBB/CCC are the owners and possessors of a five hundred ninety-nine (599) square meter parcel of land with improvements, located at Pico, La Trinidad, Benguet, and covered by TCT No. T-30853. Sometime in February 1994, Sps. BBB/CCC and Spouses DDD and EEE (Sps. DDD/EEE), both in dire need of money, agreed to obtain a loan and to share in the proceeds thereof. Apparently, the parties agreed for Sps. DDD/EEE to apply for the loan, using Sps. BBB/CCC's property as collateral, Sps. DDD/EEE being more qualified to secure a bigger loan owing to their higher credit standing with LBP. As agreed, Sps. BBB/CCC executed a Deed of Sale of Registered Land transferring ownership of the subject property to Sps. DDD/EEE. The parties likewise executed an Agreement dated March 22, 1994, where they stated their true intention that the Deed was merely executed so as to secure a higher loan.

Soon thereafter, TCT No. T-30853 was cancelled and the Register of Deeds issued TCT No. T-31549 in the name of Sps. DDD/EEE. Armed with said TCT No. T-31549, Sps. DDD/EEE applied for and were granted a loan by the LBP in the amount of Eight Hundred Thousand (P800,000.00) Pesos.

Then, on August 31, 1995, Sps. DDD/EEE executed a Deed of Absolute Sale of

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Land, conveying ownership of the same property back to the Sps. BBB/CCC. Almost a month later, though, Sps. DDD/EEE, without the knowledge and consent of Sps. BBB/CCC, applied for another loan with LBP in the amount of Nine Hundred Thousand (P900,000.00) Pesos, but using the same property as security.

Consequently, Sps. BBB/CCC sued Sps. DDD/EEE for reconveyance of real property. They also caused the annotation of a Notice of *Lis Pendens* on the dorsal portion of Sps. DDD/EEEs' TCT No. T-31549. Not long after, the aforesaid Complaint was dismissed due to Sps. BBB/CCC's failure to refer the case to conciliation before the Barangay.

Sps. DDD/EEE and Sps. BBB/CCC thus brought the matter to the Lupon. There, the parties reached a compromise by executing a Memorandum of Agreement dated September 18, 1999, where Sps. BBB/CCC agreed to sell the four hundred fifty (450)-square meter portion of the property to pay off the loan with LBP and retain the remaining one hundred fifty (150) square meters for themselves.

In the meantime, though, LBP foreclosed the property upon default of Sps. DDD/EEE to pay their obligation despite demand. At the public auction held on June 01, 1998, LBP emerged as the winning bidder. The redemption period having expired without the property being redeemed, title over the same was consolidated under LBP's name, resulting in the cancellation of Sps. DDD/EEEs' TCT No. T-31549 and the issuance of TCT No. T-45049 on March 13, 2000 to LBP.

Consequently, Sps. BBB/CCC, on January 23, 2002, caused the annotation on the dorsal portion of TCT No. T-45049, of a Notice of *Lis Pendens* relative to the Complaint filed. The same notwithstanding, LBP sold the property in question to Spouses FFF and GGG ("Sps. FFF/GGG") through a Deed of Absolute Sale dated May 02, 2002. Accordingly, Sps. BBB/CCC amended their Complaint to implead Sps. FFF/GGG and LBP as additional defendants and to pray for the cancellation/annulment of the aforesaid Deed of Sale.

After trial, the Regional Trial Court (RTC) of La Trinidad, Benguet, Branch 63 rendered its Decision dated February 09, 2009, the dispositive portion of which reads thus:

> *"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:*
>
> *1. The Sale and transfer proceedings of the subject property from Spouses* DDD *and EEE to the Land Bank of the Philippines, the Transfer Certificate of Title No. 31549 in the name of Spouses DDD and EEE and Transfer Certificate of Title No. 45049 in the name of Land Bank of the Philippines are hereby cancelled and declared null and void;*
>
> *2. The Defendants are directed to cause the reconveyance and/or restoration of the title of the subject property from Land Bank of the Philippines to the*

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plaintiffs;

3. *The Defendants Spouses DDD and EEE are directed to pay their loan obligations with the Land Bank of the Philippines including interests, surcharges, and expenses in the foreclosure proceedings and sale and transfer;*

4. *The Deed of Sale over the subject property executed by the Land Bank of the Philippines to Spouses FFF and GGG dated May 2, 2002 is hereby cancelled and annulled and to pay jointly and severally the litigation costs and expenses incurred by the plaintiffs;*

5. *The Defendants Spouses DDD and EEE are directed to pay the plaintiffs P600,000.00 by way of moral damages; P300,000 by way of exemplary damages; P75,000.00 Attorney's fees and pay litigation expenses; and*

6. *The Writ of Injunction against the defendants is hereby made permanent in favor of the plaintiffs."*

On appeal, the Court of Appeals modified the decision of the RTC by deleting the amounts of cost and litigation expenses. On October 13, 2014, the Supreme Court denied with finality the Petition for Review on *Certiorari* filed by the LBP. The resolution became final and executory on February 23, 2015.

On March 17, 2016, a Writ of Execution was issued by the RTC of La Trinidad, Benguet, Branch 63. Pursuant to the said Writ of Execution, a Deed of Reconveyance was executed by the LBP in favor of Sps. BBB/CCC on June 29, 2016 involving the property covered by TCT No. T-45049. Hence, this request.

In reply, please be informed that since the reconveyance of subject property was made in order to return the property to the legal owners, the transfer of TCT No. T-45049 in favor of Spouses BBB and CCC is not subject to capital gains tax (CGT) imposed under Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended. Likewise, the Deed of Reconveyance is not subject to the documentary stamp tax (DST) imposed under Section 196 of the National Internal Revenue Code of 1997, as amended, but is subject to the P15.00 DST on the notarial acknowledgement as imposed under Section 188 of the same Code. ***(BIR Ruling No. 351-2013 dated September 11, 2013)***

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,

(SGD.) CAESAR R. DULAY

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