November 19, 2018

BIR RULING NO. 1384-18

Sec. 204, Tax Code of 1997 as amended; RR 13-01; BIR Ruling No. 380-2013; BIR Ruling No. 459-2011

Project Management Office
Laguindingan Airport Development Project
Department of Transportation and Communications
Unit 89 The Columbia Tower, Brgy. Wack-Wack
Ortigas Avenue, Mandaluyong City

Attention: *Edgardo J. Mangalili*
Project Manager

Gentlemen :

This has reference to your letter dated March 17, 2015 seeking to reconsider the reply dated January 13, 2015 issued by the Regional Director of Revenue Region No. 16-Cagayan de Oro City which denied the request for condonation or abatement of the penalties, surcharge and interest as a result of the delay in the payment of Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) for the remaining total of 12 hectares of Laguindingan Airport Development Project (LADP) properties.

The facts, as represented, are as follows:

Of the 387.70 hectares total area acquired for LADP, 182.80 hectares were donated by Ayala Corporation while 240.90 hectares or 295 landholdings were acquired from various landowners since 1999 until 2001 and a few area in 2013. The processing of the transfer of ownership in the name of the Republic of the Philippines is on going; that the Department of Transportation and Communications (DOTC) had already paid the corresponding CGT and DST in 2003 for the 283 landholdings or equivalent to 96% without any imposition of surcharges, interests and penalties; that you submitted with the BIR-Revenue Region No. 16-Cagayan de Oro City for the payment of CGT and DST of the remaining 12 landholdings equivalent to 12.31 hectares of LADP properties described as follows:

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	Name of Previous Owners	Area (sq.m.)	Lot No.	Location	Notarization of DOAS	Lot Value per DOAS (PhP)
1	AAA Hrs. of	1,029	36-GSS-880	Liberty	9/10/2008	_____
2	BBB Hrs. of	5,762	12563	Kibaghot	5/23/2013	_____
3	CCC	385	12563	Kibaghot	5/23/2013	_____
4	DDD Hrs. of	17436	12563	Kibaghot	5/23/2013	_____
5	EEE Hrs. of	4619	12563	Kibaghot	5/23/2013	_____
6	EEE Hrs. of	383	12563	Kibaghot	5/23/2013	_____
7	FFF	981	12576	Kibaghot	2/23/2011	_____
8	GGG Heirs of	3687	12576	Kibaghot	4/25/2002	_____
9	HHH Hrs. of	217	12652	Moog	2/8/2002	_____
10	III	217	12652	Moog	2/8/2002	_____
11	JJJ Hrs. of	87808	12652	Moog	2/20/2001	_____
12	KKK Hrs. of	575	12623	Moog	4/25/2002	_____

that however, surcharges, interests and penalties are being levied on these transactions due to delay in the registration; that on January 9, 2015, you requested BIR-Revenue Region No. 16-Cagayan de Oro City for a ruling to exempt payment of such surcharges, interests and penalties but the request was not granted, stating that the grounds you cited do not fall in any provision of BIR Ruling for abatement of penalties and/or interest; and that you are further advised that it is only the Commissioner of Internal Revenue who can abate and/or cancel taxes interest and/or penalties as provided in the Revenue Regulation.

In this regard, you are respectfully requesting for consideration to grant a ruling exempting the DOTC from payment of surcharges, interests and penalties on CGT and DST.

In reply, please be informed that Section 204 of the 1997 Tax Code, as amended, provides:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. — The Commissioner may —
>
> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due.
>
> xxx xxx xxx"

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Revenue Regulations (RR) No. 13-01 dated September 27, 2001 was issued to implement Section 204 (B), in relation to Section 290 of the same Code regarding abatement or cancellation of internal revenue tax liabilities, as well as penalties and/or interest imposed on the taxpayer.

Considering that there appears no factual basis upon which the request for abatement of tax penalties is grounded upon, this office hereby denies the same and affirms the findings of BIR-Revenue Region No. 16-Cagayan de Oro City. (BIR Ruling No. 380-2013 dated October 22, 2013)

Moreover, under Sections 248 and 249 of the Tax Code of 1997, as amended, the imposition of the surcharge and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time. *(Jamora vs. Meer, 74 Phil. 22)*. The Supreme Court, in the case of *Castro vs. Collector of Internal Revenue, G.R. No. L-12174, dated April 26, 1962*, had the occasion to rule that this mandatory imposition of interest and surcharge on delinquency is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature. They are compensation to the State for the delay in payment or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State. *(BIR Ruling No. 459-2011 dated November 24, 2011)*

Lastly, this is without prejudice to the right of the Government to collect the proper amount of estate tax, capital gains tax and documentary stamp tax, as far as applicable, from the legal heirs/owner of the properties pursuant to Sections 84, 24 (D) and 196 of the Tax Code, as amended.

In view of the foregoing, the request for exemption from payment of surcharges, interests and penalties on CGT and DST is denied for lack of legal and factual basis.

Very truly yours,

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

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