REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 2 (t) of Revenue Bulletin 01-03
BIR Ruling No. 466-12
OT-0198-2020
FEB 27 2020

FERIA TANTOCO DAOS LAW OFFICES
8th Floor, DPC Place, 2322 Chino Roces Ave.
Makati City

Attention: **Atty. Michael B. Tantoco**
Managing Partner

Gentlemen:

This refers to your letter dated August 8, 2017, on behalf of your client, **Franklin Baker, Inc.** (FBI), requesting for the reconsideration of the Memorandum issued by the Chief of Legal Division of Revenue Region No. 19-Davao City, which denied FBI's request to confirm its opinion regarding the tax consequences of the exercise of FBI's right to purchase the land owned and being leased from Darong Agricultural and Development Corporation (DADC), a corporation registered with Philippine Economic Zone Authority (PEZA) as Economic Zone Developer/Operator.

It is represented that CJ Toyota Tsusho Philippines, Inc. (CJTPI) originally leased a fifteen (15)-hectare parcel of land owned by DADC ("Subject Land"), through a Land Lease Agreement (LLA) dated September 17, 2009 under which, CJTPI was granted an irrevocable option and right to purchase the Subject Land during the term of the LLA and its amendment.

On May 15, 2014, CJTPI entered into an Asset Purchase Agreement with FBI, through which, subject to CJTPI's fulfillment of certain conditions, FBI would purchase substantially all of CJTPI's assets including its leasehold rights over the subject land as covered by the LLA.

FBI is a Philippine corporation registered as an Agro-Industrial Economic Zone Enterprise under PEZA. At least 60% of its outstanding capital stock is owned by Filipino citizens.

On November 10, 2014, DADC and CJTPI entered into a Deed of Amendment which amended certain provisions of the LLA. On the same day, CJTPI and FBI entered into a Deed of Absolute Sale over the assets subject of the Asset Purchase Agreement, including the leasehold rights over the subject land. FBI became a party to the Land Lease Agreement through a Deed of Accession (to the LLA) executed between FBI, DADC, and CJTPI wherein FBI acceded to all rights and obligations of CJTPI to DADC under the LLA and its amendment. By virtue of the Deed of Accession, FBI stepped into the shoes of CJTPI as the new Lessee of DADC for the Subject Land.

OT-0198-2020
FEB 27 2020

PEZA, through a letter dated October 6, 2016, confirmed as follows:

> "1. Once the sale (between DADC and FBI) is consummated, FBI can be allowed by PEZA to act as both the locator and developer over the agro-industrial export zone, without having to change its status as a registered agro-industrial export enterprise.
> . .
>
> 2. . . . FBInc. shall continue to enjoy the incentives granted to it in its PEZA registration as an agro-industrial ecozone export enterprise.
>
> 3. DADC shall continue to maintain its registration with PEZA as the Ecozone Developer for purposes of winding down its PEZA registration and shall be able to avail of the tax incentives (5% GIT) granted to it on the sale and purchase of the land . . ."

In a Memorandum to RDO No. 115-Digos City dated June 20, 2017, RR No. 19-Davao City denied your application for confirmation of your opinion as to whether or not the assignment by CJTPI in its favor of CJTPI's option to purchase realty granted by DADC is exempt from tax. The denial was anchored on the constitutional provision that prohibits foreigners from owning lands in the Philippines making the contract between DADC and CJTPI void from the beginning, thus, cannot be validated by the subsequent assignment of said option to FBI.

Based on the foregoing, you now request for opinion and reconsideration of the Memorandum of RR 19-Davao City on the tax consequences of the aforesaid exercise of the option to purchase the subject land. Specifically, you would like us to confirm your opinion that the proceeds for the sale of the subject land from DADC, being a PEZA registered Ecozone Developer, to FBI, a PEZA-registered Ecozone developer, is entitled to the 5% preferential tax rate.

In reply, please be informed that this Office does not have the power to determine the issue of the validity of the contracts between DADC and CJTPI on one hand, and CJTPI and FBI on the other, more particularly on the assignment of the option to purchase. It is basic in statutory construction that *to declare what the law is or has been is judicial* [Ruperto G. Martin, *Statutory Construction* (Manila: Premium Printing House, 1976), 1]. It is the duty of the courts to construe statutes for the purpose of determining whether a particular act or omission falls within their intended scope or prohibition (Martin, *Statutory Construction,* 1). Hence, the construction given by executive officers cannot prevail over judicial interpretation.

On the issue of the tax consequences of the exercise of the option to purchase the subject land, this Office cannot as yet issue a determinative ruling on the above matter considering that the issue is based on hypothetical situation, which is considered as a "No-Ruling Area" pursuant to Section 2 (t) of Revenue Bulletin 01-Section 2 (t) of Revenue Bulletin 01-03 provides:

> "SECTION 2. List of No-Ruling Areas. — The following shall hereby be construed and identified as "No-Ruling Areas":
>
> xxx xxx xxx

OT-0198-2020
FEB 27 2020

t) Request for rulings on issue/s or transactions based on hypothetical situations;"

Be that as it may, we would be glad to assist you should you request for a ruling when the transaction is executed by the concerned parties.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

033206

K-1