REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

BIR Ruling No. 779-2018
0204-2019
MAR 06 2019

Philippine Cooperative Center
Agapito "Butz" Aquino Bldg.,
#90 Balete Drive Extension, Quezon City

Attention: **Garibaldi O. Leonardo, DBA**
Chairperson

Gentlemen:

This refers to your letter dated December 13, 2018 requesting for the reconsideration of BIR Ruling No. 160-2015 dated May 6, 2015, *in which this Office* denied your request for tax exemption on the transfer of a parcel of land executed by Cooperative Foundation Philippines, Inc. (CFPI) in favor of the Philippine Cooperative Center (PCC).

It is represented that in the General Appropriations Act (GAA) of 1994, an amount of Forty Million Pesos (P40,000,000.00) was allocated under the budget of the Cooperative Development Authority (CDA) for the establishment of a Cooperative Center; that on December 5, 1995, a Memorandum of Agreement (MOA) was executed and entered by Cooperative Development Authority (CDA) and CFPI, whereby CDA shall transfer in trust the amount of P40,000,000.00 to CFPI which amount shall be used for the purchase of a property suitable for the establishment of the Philippine Cooperative Center; and that under the MOA, the acquired real property shall be registered in the name of CFPI as trustee until such time that said property has been transferred to a qualified juridical entity chosen by the Steering Committee.

On December 13, 1995, CFPI bought a real property from spouses Pedro and Marietta Porciuncula (Sps. Porciuncula), covered by Transfer Certificate of Title (TCT) No. of the Registry of Deeds for Quezon City; that the aforesaid property, situated in Cubao, Quezon City, has an area of one thousand four hundred forty nine square meters (1,449 sq.m.), more or less; that TCT No. was cancelled and a new TCT No. was issued in the name of CFPI; and that the corresponding Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) due on the transfer of said property were duly paid, as evidenced by the Certificate of Authorizing Registration (CAR) No. issued by Revenue District Office (RDO) No. 39-South Quezon City on January 5, 1996.

It is further represented that the Steering Committee was tasked under the MOA to organize a cooperative composed of national cooperative organizations as Beneficiary Owner of the property bought by CFPI in Trust for the Beneficiary Owner; that not later than December 31, 1996, CFPI shall transfer ownership of the real property and the fund balance, if any, to a juridical person which shall be organized by

the Steering Committee; that per Certification dated July 16, 2002, the Steering Committee confirmed that the PCC is the Beneficiary Cooperative of the subject property; and that on July 17, 2002, a Deed of Conveyance was executed by CFPI transferring said property to PCC.

On May 6, 2015, this Office issued BIR Ruling No. 160-2015 denying the request for tax exemption, the pertinent portion of which provides:

> *"In reply, please be informed that, as a rule, the transfer of property from a trustee in favor of the beneficiary, as the true and beneficial owner, without monetary consideration and is merely a confirmation of title in favor of the beneficial owner thereof, is not subject to the capital gains tax imposed under Section 27 (D) (5) of the Tax Code of 1997, as amended, and likewise not subject to the documentary stamp tax imposed under Section 196 of the same Code. However, the notarial acknowledgment to the said deed is subject to the documentary stamp tax of P15.00 pursuant to Section 188 of the said Code.*
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> *The MOA provides that, "not later than December 31, 1996, CFPI shall transfer ownership of the real property and the fund balance, if any, to a juridical person which shall be organized by the Steering Committee". The MOA further provides that "Any violation or failure by CFPI to comply with the agreement set forth herein shall cause the automatic cancellation of the Memorandum of Agreement".*
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> *As represented, it was only on July 17, 2002 that CFPI transferred the abovementioned property to PCC. PCC was not even in existence yet when the property was acquired by CFPI from spouses Porciuncula nor during the deadline set in the MOA which is December 31, 1996. Thus, considering that the transaction took place beyond the period set by MOA, the same is considered a failure on the part of CFPI to comply with the terms of MOA. Regrettably, your request that you be entitled to tax exemption on the transfer of title from the name of CFPI to the name of PCC is hereby denied for lack of factual and legal bases. Such transfer is subject to donor's tax."*

Thus, the instant request for reconsideration of the aforesaid Ruling.

In reply, please be informed that after evaluation of the facts of the case, this Office is of the opinion, as it hereby rules, that the subject transfer of property made by the CFPI in favor of the PCC is not subject to CGT and DST on the basis that the property subject of the transfer was only being held by CFPI as trustee thereof by virtue of an express trust created between the CDA, as trustor, and CPFI, as trustee. This was made clear in Article II (3.1) of the MOA which states that "*CFPI shall act as the Trustee of the amount to be granted by the CDA and of the acquired real property until such time the same have been transferred to a qualified juridical entity chosen by the Steering Committee*". Furthermore, paragraph 3.3(d) thereof requires CFPI, as one of its responsibilities under the MOA, to *"(r)egister in its name as Trustee the purchased real property with the Land Registration Authority"*. Thus, it was the clear intention of

the parties to create an express trust over the subject property, and for CFPI to merely act as trustee thereof in favor of the beneficiary to be chosen by the Steering Committee. It is noted that the PCC is the intended beneficiary of the property as can be gleaned from the provisions of the MOA. Moreover, the Steering Committee, in its Certification dated July 16, 2002, has confirmed that the PCC is the chosen beneficiary of the property.

While the MOA provides that any violation or failure by CFPI to comply with the agreement set forth therein shall cause the automatic cancellation of the MOA, neither the MOA nor the express trust created by virtue thereof can be deemed automatically cancelled on December 31, 1996 when CFPI was not able to transfer the ownership of the subject property to PCC. It must be noted that it was the Steering Committee's obligation, not CFPI's, to organize the PCC to which the property would be transferred[1]. Since PCC was not yet organized or existing as of December 31, 1996, it was not possible for CFPI to transfer the ownership of the subject property to PCC. Thus, CFPI cannot be said to be in violation of the terms of the MOA that would cause its automatic cancellation as it was the Steering Committee's obligation to organize the PCC by December 31, 1996. Moreover, the automatic cancellation clause was meant to ensure performance by CFPI of its obligations under the MOA in order to protect the interest of the beneficiary. Hence, said clause cannot be used against PCC whose interest was intended to be protected.

In view of the foregoing, since the transfer of the subject property by CFPI in favor of the PCC is made without any monetary consideration, and by virtue of the MOA which effectively acknowledges the existence of a trust by and between the CFPI and the CDA, with PCC as the intended beneficiary, it is not subject to the CGT or to the CWT prescribed under Revenue Regulations No. 2-98, as amended. (*BIR Ruling No. 779-18* dated May 8, 2018)

Finally, under Section 191 of Revenue Regulations No. 26, otherwise known as the "Documentary Stamp Tax Regulations," conveyances to a trustee without valuable consideration, or from a trustee to a *cestui que* trust without valuable consideration, are not subject to tax. From the foregoing and since the transfer of the subject property by CFPI to PCC is in recognition of an express trust created under the MOA, the said transfer is not subject to the DST imposed under Section 196 of the Tax Code of 1997, as amended. However, the notarial acknowledgement to the Deed of Conveyance is subject to the DST of P30.00 pursuant to Section 188 of the same Code, as amended by Republic Act No. 10963. (*BIR Ruling No. 779-18* dated May 8, 2018)

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] Article IV, par. 4.3, of the MOA.