March 15, 2019

BIR RULING NO. 217-19

Republic Act No. 8367; Revenue Regulations No. 9-2012; BIR Ruling No. 117-2017; BIR Ruling No. 446-2013

Meralco Employees Savings & Loan Association, Inc.
Operations Building, Meralco Center,
Ortigas Avenue, Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 17, 2016, requesting on behalf of **Meralco Employees Savings & Loan Association, Inc. ("MESALA")** for revalidation of BIR Ruling No. DA-207-2002 dated November 15, 2002 and for the correction of its name from Meralco Savings & Loan Association, Inc. to Meralco Employees Savings & Loan Association, Inc.

It appears that this Office issued BIR Ruling DA-207-2002 dated November 15, 2002 clarifying as to whether or not the sale of foreclosed properties by MESALA through public auction is exempt from income tax under Section 27 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, creditable withholding tax (CWT) under Revenue Regulations (RR) No. 2-98, as amended, and capital gains tax (CGT) under Section 27 (D) (5) of the same Code. The pertinent portion of the said ruling is quoted as follows:

> *"In reply, please be informed that pursuant to Section 5 of Republic Act No. 8367, otherwise known as "An Act Providing for the Regulation of the Organization and Operation of Non-Stock Savings and Loan Association," the pertinent portion of which reads:*
>
> > *'Sec. 5. Tax Exemption. — An association shall be exempt from payment of tax in respect of income it receives, including interest on its deposits with any bank; Provided, however, That income derived from any of its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof, is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code.*

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only the income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code.

The subject foreclosed properties of MESALA were just collateral and served to secure the loans granted to the members. Considering that MESALA sells the foreclosed properties not as a separate activity that is conducted for profit, but rather in the ordinary or normal course of its savings and loan association business to recoup the amount loaned, the gain, if any, from such sales is exempt from taxes as provided under Sec. 5 of Republic Act No. 8367. There is, therefore, no basis in imposing the capital gains tax under Section 27(D)(5) of the 1997 Tax Code, or the expanded withholding tax required to be withheld under Sec. 2.57-2(J) of Revenue Regulations No. 2-98, as amended.

Accordingly, any income derived from the sale of the foreclosed properties by MESALA is exempt from the income tax under Sec. 27(A) of the Tax Code of 1997 and consequently from the creditable withholding tax under Revenue Regulations No. 2-98, as amended, and also from the capital gains tax under Section 27(D)(5) of the same Code. However, the sale of the foreclosed properties will be subject to the documentary stamp tax under Section 196 of the 1997 Tax Code, based on the highest or winning bid price."

In reply, please be informed that Section 5 of RA No. 8367, otherwise known as the "Revised Non-Stock Savings and Loan Association Act of 1997," provides that:

"SECTION 5. Tax exemption. — An Association shall be exempt from payment of tax in respect to income it receives, including interest on its deposits with any bank: ***Provided, however, That income derived from any of its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof, is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code.***

Interest earnings on deposits of members with Associations as well as the shares of its members from the net income of the Associations shall be exempt from income tax." (Emphasis and underscoring supplied)

Careful examination of the above-quoted provision disclosed that the income of a non-stock savings and loan association derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, which necessarily includes the payment of CGT/CWT/value-added tax (VAT), as the case may be, and documentary stamp tax (DST). Thus, the sale of the foreclosed properties by MESALA is subject to CGT imposed under Sections 24 (D) (1) and 27 (D) (5) of the National Internal Revenue Code of 1997, as amended, in relation to Section 57 of the same Code and Revenue

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Regulations (RR) No. 2-98, [1] as amended, if the property is a capital asset; or CWT imposed under Section 57 and RR No. 2-98, as amended, if the property is an ordinary asset; VAT imposed under Section 106 of the National Internal Revenue Code of 1997, as amended, and RR No. 16-2005, [2] as amended; and the DST imposed under Section 196 of the same Code. Such taxability of MESALA was also explained in BIR Ruling No. 303-2017 dated June 08, 2017, to wit:

> *"However, any income derived by MERALCO EMPLOYEES SAVINGS & LOAN ASSOCIATION, INC. from any of its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof, is subject to the applicable income tax and other internal revenue taxes imposed under National Internal Revenue Code of 1997, as amended.* ***It is subject to the applicable income tax depending on the classification of its properties as capital or ordinary asset.***"
> (Emphasis and underscoring supplied)

Please take note also of Section 2 of RR No. 9-2012 [3] which states that:

> *"SECTION 2. Taxability of Owner's/Mortgagor's Failure to Redeem His Foreclosed/Auctioned Off Property/ies within the Applicable Statutory Redemption Period. — In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the Capital Gains Tax (CGT) imposed under Sections 24 (D) (1) and 27 (D) (5) of the Tax Code, in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 and RR 2-98, as amended, if the property is an ordinary asset; the Value-Added Tax (VAT) imposed under Section 106 of the Tax Code and RR 16-2005, as amended; and the Documentary Stamp Tax (DST) imposed under Section 196 of the Tax Code shall become due.*
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> ***The buyer of the subject property****, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from the expiration of the applicable statutory redemption period; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period, provided that, for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.*
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> *If the property sold through involuntary sale is under the circumstances which warrant the imposition of VAT, the said tax must be paid to the Bureau by the VAT-registered owner/mortgagor on or before the 20th day or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes.*
>
> *The DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.*

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The CGT/CWT/VAT and DST shall be based on whichever is higher of the consideration (bid price of the highest bidder) or the fair market value or the zonal value as determined in accordance with Section 6 (E) of the Tax Code." (Emphasis and underscoring supplied)

Based on the foregoing, the unredeemed foreclosed properties sold during involuntary sales, regardless of the type of the proceedings, are subject to CGT/CWT/VAT, as the case may be, and DST. The tax due thereon shall be computed based on whichever is higher of the consideration (bid price of the highest bidder), the fair market value or the zonal value as determined in accordance in Section 6 (E) of the National Internal Revenue Code of 1997, as amended.

CGT is usually paid by the seller considering that it is imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales such as mortgage foreclosure sales whether it is done judicially or extra-judicially. However, in case of a public auction, while the applicable taxes due on the sale of the real property are for the account of the delinquent real property owner, it is the highest bidder/buyer as the statutory seller of the delinquent property which shall file the necessary tax return and pay the applicable taxes due thereon. Thus, the returns and the taxes due on the foreclosure sales by MESALA shall be filed and remitted by the highest bidder/buyer.

However, in situations where MESALA purchases the property for want of bidder in the public auction, MESALA shall be the one liable to pay the CGT/CWT/VAT, as the case may be, and DST in order for the properties to be registered under its name.

It should be remembered that laws and statutes granting tax exemptions are strictly construed against the taxpayer. Exemptions are never presumed and the burden is upon the taxpayer to establish his right to exemption beyond reasonable doubt. In the case of *Mactan Cebu International Airport Authority vs. Marcos*, [4] the Supreme Court held that:

"Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception."

IN VIEW OF THE FOREGOING, this Office hereby revokes BIR Ruling No. DA-207-2002 dated November 15, 2002 for lack of legal basis.

Please be guided accordingly.

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Very truly yours,

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

Footnotes

1. Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.
2. Consolidated Value-Added Tax Regulations of 2005.
3. Implementing Sections 24 (D) (1), 27 (D) (5), 57, 106 and 196 of the National Internal Revenue Code of 1997 on Non-Redemption of Properties Sold During Involuntary Sales.
4. G.R. No. 120082, 11 September 1996, 261 SCRA 667.

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