May 28, 2019

BIR RULING NO. 301-19

Republic Act No. 9136; BIR Ruling No. 020-2002

Power Sector Assets & Liabilities Management Corporation
7th Floor Bankmer Building
6756 Ayala Avenue, Makati City

Attention: *AAA*

Gentlemen :

This refers to your request for tax exemption on the transfer of real properties in favor of Power Sector Assets and Liabilities Management Corporation (PSALM) executed by the National Power Corporation (NPC).

It is represented that PSALM is a government-owned and -controlled corporation created by virtue of Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001. The EPIRA transferred ownership of all existing generation assets, liabilities, Independent Power Producer (IPP) contracts, real estate and all other disposable assets of the NPC to PSALM. The principal purpose of PSALM is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

In line with these mandates, PSALM is facilitating the process of transfer of ownership to its name of all existing real properties owned by NPC, among which are the lands within the Manila Thermal Power Plant (MTPP) located in Zobel Extension/Est. De Provisor, Barangay 611 Zone 071, Paco, Manila. The subject properties are described below, to wit:

Item No.	Lot No.	Area (sq.m.)	Land Status	TCT/Anntn No.	Tax Declaration
1	2	510.50			

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2	3	7,336.70	All registered in the name of NPC	146851	AD-05661-00046
3	4	10,025.40			
4	5, Blk. 918	547.80		148571	
5	6, Blk. 921	2,217.90		148586	
6	21, Blk. 921	36.20			
7	9, Blk. 921	297.40		148587	
8	10, Blk. 921	3.80			
Total		20,975.70			

In view thereof, you now request that the transfer of the aforesaid real properties be exempt from payment of capital gains tax (CGT)/creditable withholding tax (CWT) and documentary stamp tax (DST).

In reply, please be informed that this Office had the occasion to rule in *BIR Ruling No. 020-2002*, dated May 13, 2002, that NPC is not liable to income tax and DST on the transfer of its assets to PSALM. The pertinent portions of the aforesaid are hereby quoted, *viz.*:

> "In reply, please be informed that the transactions arising from or relating to the privatization of NPC will be taxed in the manner described below. In this connection, it is to be noted that this ruling shall apply only to the facts as represented, in connection with the applicable provisions of the EPIRA, the IRR, the Tax Code of 1997 and related laws existing as of the date of this ruling.
>
> A. Transfer of assets and liabilities of NPC
>
> 1. NPC is not liable to income tax on the transfer of its assets to PSALM and TRANSCO. x x x
>
> xxx xxx xxx
>
> The exemption of NPC is not limited only to the sale and transmission of generated power, but includes transactions incidental to and necessarily connected with the operations of the public utility, such as a sale or transfer on an isolated basis of its assets, which transaction is not conducted as a separate business. (*Radio Communications vs. Court of Tax Appeals*, G.R. No. 60547, July 11, 1985; *Phil. Power Development Co. vs. Commissioner*, CTA Case No. 1152, Oct. 13, 1965), x x x. Thus, the income, if any, from the sale or transfer of NPC's assets is not income from other business activities conducted by NPC but rather earnings and profits realized in connection with the business conducted in accordance with the franchise, and thus covered by the exemptions provided for in Section 32 (B) (7) (b) of the Tax Code of 1997.

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xxx xxx xxx

2. x x x

Moreover, since NPC is not a VAT-taxable entity and the transfer of its assets is not necessary to carry out its primary function as a utility and neither is it done in the course of its trade or business, such transfer shall not be subject to VAT. (BIR Ruling No. 113-98 dated July 23, 1998)

3. The transfer of real properties from NPC to PSALM and TRANSCO is not subject to Documentary Stamp Taxes (DST) under Section 196 of the Tax Code of 1997.

xxx xxx xxx

In this case, the transfer of NPC's generation assets and liabilities to PSALM, as well as of the transmission and subtransmission assets and systems to TRANSCO, all of which are government-owned and -controlled corporations is mandated by law. There is no positive offer to sell and buy the aforesaid NPC properties. Moreover, consideration, which should be the prime reason for the transfer of abovementioned assets, is not availing to the parties in the transfer of the aforementioned NPC assets. Although it has been stated earlier, it should bear stressing that this is a transaction between and among government-owned and -controlled corporations pursuant to a law calling for the reorganization of NPC's assets.

Consideration is defined as the inducement to a contract. It is the reason or material cause of a contract. It is some right, interest, profit, or benefit accruing to one party. (Black's Law Dictionary, 6th Edition)

In the case of PSALM, its assumption of NPC's liabilities is mandated by law. Normally, the transfer of property by a person (transferor) to another person (transferee) in exchange for the assumption by said person of the transferor's liability will be considered a sale, where the assumption of liability constitutes a consideration for the assets. The gain, if any, from the transfer is the difference between the higher of the consideration received or zonal value, if applicable, and the value of the assets given up. The amount of the liabilities transferred is treated as part of the consideration.

Likewise, the taking of title over the assets of NPC by PSALM for the purpose of selling or disposing them, is consistent with the guidelines set under the EPIRA. Unlike in an ordinary business transaction, PSALM, as the entity assuming the obligation, does not exercise any discretion whether to accept the assets and liabilities to be transferred nor does it play any role in the determination of the amount of the liabilities that it will assume.

Accordingly, the transfer of ownership over NPC properties to PSALM is not a

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transaction contemplated within Section 196 of the Tax Code, and therefore neither NPC, PSALM nor TRANSCO is subject to DST under the said section. The notarial certification, is however, subject to the DST of fifteen pesos (P15.00) imposed under Section 188 of the Tax Code of 1997."

Based on the foregoing, we rule that the transfer of the subject real properties by NPC in favor of PSALM, made in accordance with the provisions of the EPIRA, is not subject to CGT/CWT, VAT or DST based on the same *ratio decidendi* as discussed in *BIR Ruling No. 020-2002*. However, the notarial acknowledgement on the Deed of Conveyance/Transfer is subject to the documentary stamp tax under Section 188 of the 1997 Tax Code, as amended.

This will, therefore, serve as authority for the concerned Revenue District Officer to issue the corresponding Certificate Authorizing Registration (CAR) for the transfer of the NPC properties in the name of PSALM.

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
Commissioner of Internal Revenue

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