August 30, 2019

BIR RULING NO. 468-19

Section 27 (D) (5) of the National Internal Revenue Code of 1997, as amended; Republic Act (RA) No. 9182; Revenue Regulations (RR) No. 6-2004, as amended by RR No. 9-2005; RR No. 6-2004; BIR Ruling No. 535-2018

Grandholdings Investments (SPV-AMC), Inc.
2/F All Seasons Bldg., 112 Aguirre St.,
Legaspi Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 21, 2019, requesting on behalf of **Grandholdings Investments (SPV-AMC), Inc. ("Grandholdings")**, with Taxpayer's Identification Number (TIN) 000-000-000-000, for an opinion on the tax payment and application for certificate authorizing registration (CAR) of one (1) property covered by Transfer Certificate of Title (TCT) No. 257448 acquired by Grandholdings from Allied Banking Corporation (TIN: 000-000-000-000) in accordance with Republic Act (RA) 9182, otherwise known as "The Special Purpose Vehicle Act (SPV) of 2002," as amended by RA No. 9343.

Documents submitted disclosed the following:

1. On April 29, 2008, a Deed of Sale was executed by and between Allied Banking Corporation and Grandholdings conveying unto the latter the following properties:

TCT No.	Location/Description	Area	Price

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230244	Nos. 779 to 795 Juan Luan Street, San Nicolas, Manila	49.15	
230247	Nos. 779 to 795 Juan Luan Street, San Nicolas, Manila	52.3	
257448	2224 Cabo St., Gagalangin, Tondo	102	
256391	1087 Apacible corner Perez Sts., Paco, Manila	998.3	

2. On October 28, 2009, the Bangko Sentral ng Pilipinas (BSP) issued a Certificate of Eligibility (of Non-Performing Assets) (COE) certifying therein that Allied Banking Corporation is a bank that is qualified as a Financial Institution with assets that also qualify as Non-Performing Assets, in accordance with RA No. 9182, as amended by RA No. 9343, and its Implementing Rules and Regulations. The BSP likewise approved the transfer/sale of Non-Performing Assets owned by Allied Banking Corporation to Grandholdings which includes TCT No. 257448, and further certified that the transaction appears to be in the nature of a "true sale."

3. Considering that TCT Nos. 230244, 230247, and 256391 are still under litigation, Grandholdings, in its letter dated October 16, 2018, requested Revenue District Office No. 29, Tondo, Manila, that its application for CAR for the property covered by TCT No. 257448 be given due course only in the meantime, as it cannot apply for the transfer of ownership of the three (3) other TCTs.

In reply, please be informed that pursuant to Section 27 (D) (5) of the National Internal Revenue Code (NIRC) of 1997, as amended, acquisition of real property treated as capital asset is subject to capital gains tax (CGT) on the gains presumed to have been realized from said transfer. However, with the enactment of RA No. 9182 ("SPV Law"), the transfer of a ROPOA [1] by an SPV to a third-party is among the enumerated transactions qualified under SPV Law as exempt from taxes. *(BIR Ruling No. 535-2018 dated March 26, 2018)*

Section 7 (d) in relation to Item (a) (8) thereof, both of Revenue Regulations (RR) No. 6-2004, [2] enumerates the following taxes that a qualified transaction is exempt from under the SPV Law, to *wit*:

> *"SECTION 7. Tax exempt transactions. — (a) Pursuant to Section 15 of Article IV of the Act, only the following transactions shall be covered by the tax exemptions as provided in paragraph (d) hereof:*

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xxx xxx xxx

(d) The transactions enumerated in paragraph (a) above, subject to the conditions set forth in paragraphs (b) and (c) above, shall be exempt from the following taxes:

(1) Documentary stamp tax (DST) on any document evidencing the transfer or dation in payment as may be imposed under Title VII of the NIRC of 1997, the last phrase of Section 173 of said Code notwithstanding;

(2) Capital gains tax (CGT) imposed on the transfer of land and/or building treated as capital asset in the hands of the transferor, as defined under Section 39(A)(1) of the NIRC of 1997;

(3) Creditable withholding income taxes imposed on the transfer of land and/or building treated as ordinary asset in the hands of the transferor pursuant to Revenue Regulations No. 2-98, as amended: Provided, That this shall not include exemption from income tax under Title II of the NIRC of 1997. The transfer by an FI or by an SPV of its NPA which is treated as its ordinary asset shall continue to be subject to the ordinary corporate income tax or minimum corporate income tax, as the case may be, under pertinent provisions of the NIRC of 1997;

(4) Value-Added Tax (VAT) as may be imposed under Title IV of the NIRC of 1997, or gross receipts tax under Title V thereof, whichever is applicable: Provided, That in case of a VAT-exemption and pursuant to Section 110(A)(3) of the NIRC of 1997, the following rules shall apply:

(i) if the property being transferred was intended for sale, for conversion into or intended to form part of a finished product for sale, for use as supplies in connection with trade or business, or as supplies in the sale of services, by a VAT-registered person, the input tax which can be directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities;

(ii) if the property being transferred is a capital good used in the trade or business of a VAT-registered person, the input tax on the said property shall be allocated as follows: the depreciated book value of the property over its acquisition cost, multiplied by the input tax directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities; and

(iii) the amount of the unallowable input taxes as determined in paragraphs (i) and (ii) above, if previously debited to "Input Taxes," shall be charged back to the property under the following adjusting entry:

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Dr. Inventory/Supplies/Asset *xxx*

Cr. Input Taxes *xxx"*

However, Section 3 of RR No. 9-2005 [3] amending RR No. 6-2004, provides that:

"SEC. 7. Tax-exempt transactions. —

xxx xxx xxx

*(c) The **tax exemptions as provided in paragraph (d) hereof shall apply to the transactions listed in paragraph (a) above only if the following particular requirements, where applicable, are complied**, to wit:*

xxx xxx xxx

*3. In the case of transactions (a)(7), **(a)(8)**, (a)(11) and (a)(12) above, the **NPL/ROPOA must have been acquired by the SPV or Individual from an FI within the period from April 12, 2003 to April 12, 2005**, in the nature of, and approved by the Appropriate Regulatory Authority as a "true sale" pursuant to the Act and its implementing rules and regulations; and **that the transaction must have occurred within the period of five (5) years from the date of said acquisition**. Thereafter, the tax exemptions provided in paragraph (d) hereof shall no longer apply."* (Emphasis and underscoring supplied)

Based on the foregoing, in order for the transfer of a ROPOA by an SPV to a third party [4] to qualify as tax-exempt transaction, all of the following requirements should be complied with:

a) The ROPOA must have been acquired by the SPV or individual from an FI within the period from April 12, 2003 to April 12, 2005;

b) The transfer is in the nature of, and approved by the Appropriate Regulatory Authority as a "true sale" pursuant to the Act and its implementing rules and regulations; and

c) The transaction must have occurred within the period of five (5) years from the date of said acquisition.

Additionally, Section 2 of RA No. 9343 [5] amending RA No. 9182, provides that:

*"**All sales or transfers of NPAs from the FIs to an SPV** or transfers by way of*

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dation in payment (dacion en pago) by the borrower or by a third party to the FI ***shall be entitled to the privileges enumerated herein for a period of not more than two (2) years from the date of effectivity of this amendatory Act: Provided, That transfers from an SPV to a third party of NPAs acquired by the SPV within such two-year period*** *or transfers by way of dation in payment (dacion en pago) by a borrower to the SPV* ***shall enjoy the privileges enumerated herein for a period of not more than five (5) years from the date of acquisition by the SPV****: Provided, further, That properties acquired by an SPV from GFIs or GOCCs which are devoted to socialized or low-cost housing shall not be converted to other uses."* (Emphasis supplied)

In relation with this, BSP issued Memorandum No. M-2006-004 dated June 23, 2006 providing for the significant time lines relative to the implementation of RA No. 9182, as amended by RA No. 9343:

"b. Sale/Transfer of Non-Performing Assets (NPAs) Entitled to Tax Exemptions and Fee Privileges.

The following transactions enumerated as items 1 to 6 of Section 15 of the Implementing Rules and Regulations of the SPV Law are entitled to tax exemptions and fee privileges under the same Section ***only if such transactions occur within two (2) years from the effectivity of the amendatory Act or from 14 May 2006 to 14 May 2008****:*

1. *The transfer of the NPL by the FI to an SPV;*
2. ***The transfer of the ROPOA by the FI to an SPV****;*
3. *The dation in payment (dacion en pago) of the NPL by the borrower to the FI;*
4. *The dation in payment (dacion en pago) of the NPL by the third party, on behalf of the borrower, to the FI;*
5. *The transfer of the NPL (secured by a real estate mortgage on a residential unit) by the FI to an individual; and*
6. *The transfer of the ROPOA (single family residential unit) by the FI to an individual.*

For the purpose of determining whether a transaction occurred within the two-year period or from 14 May 2006 to 14 May 2008, relevant documents to support the application (e.g., Asset Sale and Purchase Agreement, Deed of Assignment, Deed of Dacion, etc.) should be notarized within the said two-year period." (Emphasis supplied)

In this case, the Deed of Sale between the financial institution, (Allied Banking

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Corporation) and Grandholdings conveying the former's rights, obligation, title and interest in the subject property to the latter was executed and notarized on April 29, 2008. It was made during the 2-year period from the effectivity of RA No. 9343 or from May 14, 2006 to May 14, 2008. Moreover, a CEO has been issued by the BSP certifying that the transfer/sale of Non-Performing Assets owned by Allied Banking Corporation to Grandholdings which includes TCT No. 257448, appears to be in the nature of a "true sale." Thus, the said sale of TCT No. 257448 is entitled to the exemption granted under RA No. 9182 pursuant to Section 12 (a) of RR No. 6-2004, as amended, in relation to Section 7 (c) and (d) of the same RR, which provides that:

> *"SECTION 12. Certificate of Eligibility. — (a) The COE issued by the Appropriate Regulatory Authority shall serve as a prima facie proof of an NPL/ROPOA being an NPA within the purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling. If applicable, it shall likewise serve as a prima facie proof that the transfer from an FI to an SPV is in the nature of a "true sale" within the purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling."*

This will therefore serve as the authority and guide for Revenue District Office No. 29, Tondo, Manila, to issue the corresponding CAR and/or Tax Clearance (TCL) on TCT No. 257448 only, considering that TCT Nos. 230244, 230247, and 256391 are still under litigation, upon compliance with the requirements, in line with the procedures provided in Section 13 of the said RR No. 6-2004. The CAR is required to be issued in order that the title of the property be transferred in the name of Grandholdings pursuant to Section 56 of the National Internal Revenue Code of 1997, as amended.

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

Footnotes

1. ROPOA refers to real and other properties owned or acquired by an FI in settlement of loans and receivables, including real properties, shares of stocks, and chattels formerly constituting collaterals for secured loans which have been acquired by way of dation in payment *(dacion en pago)* or judicial or extra-judicial foreclosure or execution of judgment. (RA No. 9182)

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2. Implementing the Tax Exemptions and Privileges Granted under Republic Act No. 9182, Otherwise Known as "The Special Purpose Vehicle (SPV) Act of 2002" dated March 31, 2004.
3. Amending Pertinent Provisions of Revenue Regulations (RR) No. 06-04 Relative to the Tax Exemptions and Privileges Granted under Republic Act No. 9182, Otherwise Known as "The Special Purpose Vehicle (SPV) Act of 2002 (the 'Act')" dated March 19, 2005.
4. Section 7 (a) (8) of RR No. 6-2004.
5. "An Act Amending Republic Act No. 9182, Otherwise Known as the Special Purpose Vehicle Act of 2002 for the Purpose of Allowing the Establishment and Registration of New SPVs and for Other Purposes" dated April 24, 2006.

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