March 26, 2018

BIR RULING NO. 535-18

Section 27 (D) (5); R.A. 9182; RR 6-2004,
as amended by RR 9-2005; RR 6-2004;
BIR Ruling No. 107-10

AAA

Madam :

This refers to your case docket dated January 29, 2009, received by this Office on November 30, 2010 by way of 2nd Indorsement dated November 22, 2010 from Revenue Region No. 14-Tacloban City, requesting that the transaction covering the sale of two (2) qualified Non-Performing Assets of Philippine Investment Two (SPV-AMC), Inc. to you be exempted from payment of capital gains and documentary stamp taxes pursuant to Republic Act (R.A.) No. 9182, as amended by R.A. No. 9343 otherwise known as the "Special Purpose Vehicle Law."

Documents submitted disclose the following:

1) On July 31, 2008, the *Bangko Sentral ng Pilipinas* (BSP) approved the sale of two (2) qualified Non-Performing Assets, which includes the following subject properties owned by Development Bank of the Philippines (DBP) (TIN 000-000-000-000) to Philippine Investment Two (SPV-AMC), Inc. ("PITwo-SPV") (TIN 000-000-000-000):

Property/Location	TCT	Area (in sq.m.)
Land with improvements Lot 1-E-1/Brgy. Serrano, Dulag, Leyte	T-36938 *(formerly TCT T-30212)*	1,350
Land with improvements Lot 1-E-2-C/Rizal Ave., Brgy. Serrano, Dulag, Leyte	T-36935 *(formerly TCT T-30213)*	32,327

The BSP certified that the transaction appears to be in the nature of a "true sale" in accordance with R.A. No. 9182, as amended by R.A. No. 9343 and its Implementing Rules and Regulations (IRR);

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2) On July 21, 2010, the Securities and Exchange Commission (SEC) issued two (2) Certificates of Eligibility (of Non-Performing Assets) certifying the eligibility for benefits under the said R.A. of the foregoing assets that shall be sold to AAA as follows:

COE Control No.	Property/Location	TCT	Consideration
401 From COE No. BSP08C01493034C	Land with improvements Lot 1-E-1/Brgy. Serrano, Dulag, Leyte	T-36938 *(formerly TCT T-30212)*	P_____
400 From COE No. BSP08C01493034C	Land with improvements Lot 1-E-2-C/Rizal Ave., Brgy. Serrano, Dulag, Leyte	T-36935 *(formerly TCT T-30213)*	P_____

3) On August 10, 2010, two (2) Deeds of Absolute Sale were executed by PITwo-SPV in favor of AAA (TIN 000-000-000-000) covering the subject properties:

Property/Location	TCT	Consideration
Land with improvements Lot 1-E-1/Brgy. Serrano, Dulag, Leyte	T-36938	P_____
Land with improvements Lot 1-E-2-C/Rizal Ave., Brgy. Serrano, Dulag, Leyte	T-36935	P_____

In reply, please be informed that pursuant to Section 27 (D) (5) of the Tax Code of 1997, acquisition of real property treated as capital asset is subject to capital gains tax on the gains presumed to have been realized from said transfer. However, with the enactment of R.A. 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. 107-10 dated October 19, 2010)*

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:

> "(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 the 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 in Section 39(A)(1) of the NIRC of 1997;

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(3) Creditable withholding income taxes imposed on the transfer of land and/or buildings treated as ordinary assets 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 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; and

(4) Value-Added Tax (VAT) as may be imposed under Title IV of the NIRC of 1997: Provided, that in the case of VAT-exemption and 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 VAT-taxable activities."

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." (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

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

Additionally, Section 2 of R.A. No. 9343 [5] amending R.A. No. 9182, provides:

"**All sales or transfers of NPAs from the FIs to an SPV** or transfers by way of 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 R.A. No. 9182, as amended by R.A. 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

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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)*

As to the first requirement, documents submitted disclose that the Deeds of Absolute Sale executed between the financial institution (DBP) and PITwo-AMC conveying the former's rights, obligation, title and interest in the subject properties to the latter are both dated and notarized on August 14, 2008. Said Deeds of Absolute Sale refer to the Asset Sale and Purchase Agreement (ASPA) dated October 16, 2006 (notarized February 26, 2008), the Asset Schedule thereof lists the subject properties — TCT Nos. T-36938 *(formerly TCT No. T-30212)* and T-36935 *(formerly TCT No. T-30213)* among the assets acquired. Thus the Deeds of Absolute sale are confirmations of the acquisition/transfer of the NPAs which were made during the 2-year period.

Inasmuch as the Certificates of Eligibility (COE) have already been issued by the SEC and that the Deeds of Absolute Sale between the PITwo-SPV and you have been notarized within 15 days from the date of the COE, it is hereby held that the sale between PITwo-SPV and you is entitled to the exemption granted under R.A. 9182 pursuant to Section 12 (a) of RR No. 06-2004 in relation to Section 7 (c) and (d) of the same RR, which provides:

"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 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

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judgment. (R.A. 9182)

2. March 31, 2004. Implementing the Tax Exemptions and Privileges Granted under Republic Act No. 9182, Otherwise Known as "The Special Purpose Vehicle (SPV) Act of 2002."
3. March 19, 2005. 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")."
4. Section 7 (a) (8), Rev. Regs. 06-2004.
5. April 24, 2006. 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.

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