April 5, 2018

BIR RULING NO. 608-18

Executive Order No. 55

National Power Corporation
Quezon Avenue corner BIR Road
Diliman, Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 29, 2015 requesting legal opinion on the tax consequences of the transfer of the ownership of the Philippine Nuclear Power Plant (PNPP) from the National Power Corporation (NPC) to the National Government (NG) of the Philippines pursuant to Executive Order (EO) No. 55 issued on November 4, 1986.

It is represented that on May 28, 1984, NPC, a government-owned and controlled corporation created by virtue of Republic Act (RA) No. 6395, as amended, completed the construction of the PNPP in Bataan. However, the administration of then President Corazon Aquino decided not to operate the PNPP for reasons of safety and economy. [1] Thereafter, EO No. 55 was issued to transfer the ownership of the PNPP to the NG. EO No. 55 also provided for the assumption by the NG of the foreign loans and peso obligations of NPC incurred to finance the construction of the PNPP. The relevant portion of the EO provides that:

> *"Section 1. The Philippine Nuclear Power Plant 1 (PNPP-1), its equipment, materials and facilities, records and uranium fuel are hereby transferred and placed under ownership and disposition of the National Government or its duly designated agency."*

NPC successfully secured the consent of its creditors for the transfer; thus, the ownership of the PNPP and the payment of the loans of NPC were subsequently assumed by the NG. Notwithstanding said transfer, NPC continued to maintain the PNPP up to the present pursuant to Section 4 of EO No. 55 which states that:

> *"Section 4. Until the National Government or its duly designated government agency shall have studied and ultimately determined the disposition of the Philippine Nuclear Power Plant 1 (PNPP-1), the National Power Corporation*

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is hereby designated as the caretaker thereof, undertaking the necessary and requisite preservation, maintenance and security program thereof with the expenditures necessarily connected thereto to be shouldered by the National Government for which purpose there shall likewise be an annual appropriation of such sums out of the General Fund in the National Treasury not otherwise appropriated."

In connection with certain proposals affecting the use of the PNPP and the lands underlying the same there is a need to transfer the titles of the land which are registered under the name of NPC to the NG. To document and confirm the previous transfer of the PNPP and the subject lands, as mandated under EO No. 55 and to comply with land registration procedures, NPC and the NG, represented by the Department of Finance (DOF), are preparing the execution of a Deed of Confirmation to evidence the transfer of ownership of the PNPP. While the transfer in favor of the NG was already deemed made by operation of law, a deed confirming the same needs to be presented to the concerned Register of Deeds in support of the transfer of titles in the name of the Republic of the Philippines.

Based on the foregoing, you now request confirmation of the following:

1. The transfer in favor of the National Government of the PNPP is not subject to income tax.

2. The transfer in favor of the National Government of the PNPP is not subject to documentary stamp tax (DST).

In reply, please be informed as follows:

Capital Gains Tax

Section 27 (D) (5) of the 1997 Tax Code, as amended, provides for the taxability of gains presumed to have been realized by a domestic corporation on the sale, exchange or other disposition of lands and buildings, to wit:

xxx xxx xxx

"(5) Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings. — A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, of such lands and/or buildings."

The above-cited provision does not apply in the instant case. There is no sale, barter or exchange of the PNPP as contemplated under the above provision since the transfer of the PNPP from NPC to the NG was made by virtue of the issuance of EO No.

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55. Thus, the transfer of the PNPP from NPC, which is acting merely as a caretaker pursuant to Section 4 of EO No. 55, to the National Government, as the owner thereof, without any monetary consideration, is not subject to capital gains tax.

Documentary Stamp Tax

The Deed of Confirmation to be executed by NPC in favor of the National Government to confirm the transfer of the PNPP to the latter is likewise not subject to documentary stamp tax imposed under Section 196 of the Tax Code of 1997, as amended, considering that there is no sale, grant, assignment, conveyance or transfer contemplated under Section 196 of the Tax Code of 1997. However, the notarial acknowledgement on the Deed of Confirmation is subject to the documentary stamp tax under Section 188 of the same Code.

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 PNPP in the name of the Republic of the Philippines.

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. Executive Order No. 55.

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