April 30, 2018

BIR RULING NO. 744-18

Sections 24 (B) (2) & 73 (B), (C) Tax Code of 1997, as amended; 000-00

Ilo Land, Inc.
Unit 2A 114 Integrity Ave. cor. Enterprise Drive
Canlubang, Calamba, Laguna

Attention: *AAA*

Gentlemen :

This refers to your undated letter received by this Office on June 29, 2012, requesting tax exemption for the payment of final withholding tax for the declaration of stock dividends.

It is represented that ILO LAND, INC. is a domestic corporation with business address at Unit 2A 114 Integrity Ave. cor. Enterprise Drive Canlubang, Calamba, Laguna primarily engaged in realty business; and that the ILO LAND, INC. declared stock dividends amounting to P_____, as evidenced by a secretary's certificate dated December 8, 2008.

In reply, please be informed that prior to the amendments introduced into the Tax Code by Republic Act (R.A.) No. 8424 (Tax Code of 1997), corporate dividend distribution was, in general, exempt from income tax. However, beginning on January 1, 1998 or the date of effectivity of R.A. No. 8424, dividend became subject to final withholding tax pursuant to the last paragraph of Section 24 (B) (2) of the Tax Code of 1997 which provides, *viz.*:

> *"Provided, however, That the tax on dividends shall apply only on income earned on or after January 1, 1998. Income forming part of retained earnings as of December 31, 1997 shall not, even if declared or distributed on or after January 1, 1998, be subject to this tax."*

The provision of the Tax Code on source dividend distribution states that *" . . . any distribution made to the shareholders or members of a corporation shall be deemed to have been made from the most recently accumulated profits or surplus, and shall constitute a part of the annual income of the distributee for the year in which received."*

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(Section 73 (C), Tax Code of 1997). This *proviso* originated from the original Tax Code of 1939 (Commonwealth Act No. 466), during which time, dividend was taxable.

Hence, to reconcile Sections 24 (B) (2) and 73 (C) both of the Tax Code of 1997, in various BIR rulings, this Office ruled that —

> *". . . if a corporation had accumulated profits as of December 31, 1997, its distribution of dividends beginning 1998 and thereafter must come from the most recently accumulated profits unless a board resolution by the Board of Directors has been issued stating that said dividends declared forms part of the Retained Earnings as of December 31, 1997."*

Under Section 24 (B) (2) (b) of the Tax Code, as amended, dividends such as cash and/or property dividends received by an individual from a domestic corporation shall be subject to FWT. This provision excludes stock dividends received as taxable. Similar treatment of stock dividends received is emphasized in Section 73 of the same Code, as follows:

> *"SEC. 73. Distribution of Dividends or Assets by Corporations. —*
>
> *xxx xxx xxx*
>
> *(B) Stock Dividend. — A stock dividend representing the transfer of surplus to capital account shall not be subject to tax. However, if a corporation cancels or redeems stock issued as a dividend at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be considered as taxable income to the extent that it represents a distribution of earnings or profits."*

However, Section 73 of the 1997 NIRC, as amended, should be read in conjunction with Section 252 of Revenue Regulations (RR) No. 2, stating:

> *SECTION 252. Stock dividends. — A stock dividend which represents the transfer of surplus to capital account is not subject to income tax. However a dividend in stock may constitute taxable income to the recipients thereof notwithstanding the fact that the officers or directors of the corporation (as defined in Section 84) choose to call such distribution as a stock dividend. The distinction between a stock dividend which does not, and one which does, constitute income taxable to the shareholder is the distinction between a stock dividend which works no change in the corporate entity, the same interest in the same corporation being represented after the distribution by more shares of precisely the same character, and a stock dividend where there either has been a change of corporate identity or a change in the nature of the shares issued as dividends whereby the proportional interest of the shareholders after the distribution is essentially different from his former interest. A stock dividend constitutes income if it gives the shareholder an interest different from that which his former stockholdings represented. A stock dividend does not constitute income if the new shares confer no different rights or*

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interests than did the old — the new certificates plus the old representing the same proportionate interest in the net assets of the corporation as did the old.

Clearly, stock dividends are subject to income tax if after the declaration of stock dividends there is a change in proportional interests of the shareholders pursuant to Section 252 of R.R. No. 2.

Accordingly, stock dividends declared and distributed by ILO LAND, INC. to its stockholders on October 20, 2008, if forming part of retained earnings and no change in proportional interests of the shareholders, shall not be subject to income tax pursuant to Section 24 (B) (2) of the Tax Code of 1997, and consequently to any withholding tax.

Moreover, stock dividends declared and distributed by ILO LAND, INC. to its stockholders on October 20, 2008 shall be subject to Documentary Stamp Tax (DST) under Section 174 of the same Code, as amended, thus, in all cases where the issued shares are with par value, the basis of the DST shall be the par value thereof. For shares of stock without par value, the basis shall be the actual consideration for the shares of stock. However, in a case where shares of stocks without par value are issued as stock dividends, the basis of the DST shall be the actual value represented by each share.

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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