REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Republic Act No. 9136
BIR Ruling No. 431-2017

OT-291-2022
JUN 10 2022

NATIONAL POWER CORPORATION
Quezon Avenue Corner BIR Road,
Diliman, Quezon City

Attention: MA. GLADYS CRUZ-STA. RITA
NPC President and CEO

Gentlemen:

This refers to your request for exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) on the reconveyance of Lots 3 and 4 of Psd- covered by Transfer Certificate of Title (TCT) Nos. and issued to Power Sector Assets and Liabilities Management (PSALM) Corporation by the Registry of Deeds for Province of Laguna, Calamba Branch.

It is represented that when Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA), was passed into law last June 8, 2001, PSALM Corporation was created pursuant to Section 49, to take the ownership of all existing National Power Corporation (NPC) generation assets, liabilities, Independent Power Producer (IPP) contracts, real estate and all other disposable assets. In relation therewith, several deeds of transfer conveying and transferring the ownership of NPC to PSALM over plants and facilities including the land, structures, equipment, machineries and other improvements were executed by the said corporations. On March 24, 2010, a Deed of Transfer was executed involving the Tiwi and Makiling-Banahaw Geothermal Power Plants inclusive of several parcels of land and various structures found thereon, including Lots 3 and 4 of PSD located in Brgy. Bitin, Bay, Laguna, notwithstanding that the said lots are within the watershed area.

Pursuant to Section 34 (d) of the EPIRA Law, NPC is mandated to continue to undertake watershed management and is entitled to an environmental charge fund for the management of watersheds under its jurisdiction. However, in the afore-mentioned 2010 Deed of Transfer, Lots No. 3 and 4 of located in Brgy. Bitin, Bay, Laguna were included in the properties transferred from NPC to PSALM Corporation, notwithstanding that the said lots are within the watershed area and thus, ownership of which should have been retained with NPC.

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To rectify the mistake caused by their inadvertence and oversight, on May 23, 2016, a Deed of Reconveyance was executed between PSALM and NPC wherein parties mutually agreed to rescind the 2010 Deed of Transfer insofar as Lots 3 and 4 of is concerned for the purpose of reconveying to NPC the said lots. Hence, the request.

In reply, please be informed that in the case of *Mariano Z. Velarde et al. vs. Court of Appeals, et al., G.R. No. 108346* dated July 11, 2001, the Supreme Court held that "(t)o rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made."

Based on the foregoing, the rescission of a contract would not give rise to a taxable event for two reasons: a) the result of rescission is that it is as if there was no sale, transfer or exchange, and hence, no income is realized; and b) the return of the object of the rescinded contract is not for monetary consideration and is merely an acknowledgement or confirmation of the title and ownership of the original owner of the property.

Such being the case, the reconveyance by PSALM of Lots No. 3 and 4 covered by TCT Nos. and in favor of NPC, in accordance with the parties' mutual agreement to rescind the 2010 Deed of Transfer insofar as said lots are concerned, is not subject to CGT imposed under Section 27(D) of the National Internal Revenue Code (Tax Code of 1997), as amended. Moreover, said reconveyance is not subject to DST as there is no sale transaction or conveyance for consideration that is being contemplated under Section 196 of the 1997 Tax Code of 1997, as amended. *(CIR vs. Pilipinas Shell Petroleum Corp., G.R. No. 192398, September 29, 2014)*

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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