REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Secs. 7(c) & 204(A(2); RMO 22-2001	00-000	#335-2017 7-4-2017

Person to Contact: Chief, Law Division

Tel Nos. 926-5536/927-0963

CHATO & VINZONS CHATO
LAW OFFICES
8th Floor, Strata 2000
F. Ortigas Jr. Road, Ortigas Center
1605 Pasig City

Attention: **Atty. Esther R. Ibañez**

Gentlemen:

This refers to your letter dated January 19, 2017 requesting on behalf of your clients, Lilia Ana C. Favis, Ana Isabel Recto, Cesar Recto III, Roberto S. Claudio, Sr., Rodolfo S. Claudio, Cecille Claudio, Ma. Victoria C. Viñas and Anita Realty and Development Corporation (hereinafter the "Claudios" for brevity), for a ruling on whether your clients may be entitled to a compromise settlement of the capital gains and documentary stamp taxes on the transfer of properties to their names, one property located in Horse Shoe, Quezon City which is covered by Transfer Certificate of Title (TCT) No. and another in Amapola, Bel Air III, Makati, which is covered by TCT No. (the "Subject Properties").

Background

The properties were conveyed as a Dation in Payment by CIPI Finance and Leasing Corporation (CIPI) formerly, "Corporate Finance Philippines, Inc. (CFPI)" , now Investors Financial Services Corporation (IFSC), to the Claudios in exchange for a short term credit facility but the titles of the aforementioned properties remain under the previous owners namely: Jose L. Moya for the Quezon City property and Cesar Yatco Real Estate Service for the Makati property, although there was already an extrajudicial foreclosure sale of the said properties in favor of IFSC.

IFSC has been declared insolvent per order of March 8, 2002 issued in Sp. Proc. No. , RTC Pasig, Br. 153, and thus incapacitated to pay its obligation with the BIR. It is in this regard that the Claudios are requesting for a ruling on a compromise of the taxes on behalf of IFSC on the transfer of the aforementioned properties to them.

#335-2017
7-4-2017

A detailed background of the tax incidents for the transfers of the subject properties are as follows:

"Horse Shoe" Property

The subject property is registered under the name of Jose L. Moya under TCT No. On September 29, 1998, Mr. Moya executed a real estate mortgage in favor of CIPI Finance and Leasing Corporation (CIPI).

Mr. Moya defaulted on his loan payments. Thereafter, CIPI filed a petition for extra-judicial foreclosure and eventually became the highest bidder. The title of the said property was not, however, transferred to CIPI. Said real estate mortgage and the eventual foreclosure sale of the property in favor of CIPI were on the back of TCT No. RT-62814.

"Amapola Bel Air III" Property

On September 29, 1995, Cesar Yatco Real Estate Services, Inc. (CYRES, Inc.) was granted credit and financing facilities by Corporate Finance Philippines, Inc. (CFPI) to the extent of P . As the registered owner of a parcel of land in Makati City covered by TCT No. CYRES executed a real estate mortgage covering the above-mentioned property in favor of CFPI. Said security arrangement was inscribed on the back of TCT No.

CYRES, Inc. defaulted on its obligation. Hence, CIPI filed a petition for extrajudicial foreclosure of Real Estate Mortgage. CIPI being the highest bidder, a certificate of sale was then executed in favor of CIPI.

Change of corporate name from
CFPI to CIPI to IFSC

CFPI later became known as CIPI Finance and Leasing Corporation (CIPI). It then subsequently became known as Investors Financial Services Corporation (IFSC).

Short-term credit facility secured
by IFSC from the "Claudios"

IFSC obtained a short-term credit facility amounting to from Lilia Ana C. Favis, Ana Isabel Recto, Cesar Recto III, Roberto S. Claudio, Sr., Rodolfo S. Claudio, Cecille Claudio, Ma. Victoria C. Viñas and Anita Realty and Development Corporation. To secure the payment of the loan, it was mutually agreed that IFSC would assign to the Claudios the subject parcels of land. A Deed of Assignment By Way of Security was duly executed by IFSC, through its Executive Vice President, Luther Z.

Calderon and Vice President, Atty. Nazzar R. Luiz, and the Claudios on April 12, 2000. The Deed of Assignment provides that:

> "WHEREAS, the Assignee/Lender has agreed to grant the short-term credit facility on condition, among others, that the Assignor shall assign certain real estate properties to the Assignee/Lender as security for the repayment of the said credit facilities more particularly described as follows:
>
> TCT No. RT-
>
> A parcel of land situated in Quezon City, containing an area of ONE THOUSAND TWO HUNDRED FORTY FIVE (1,245) sq. m. more or less.
>
> TCT No. RT-
>
> A parcel of land situated in Amapola St., Bel-Air III, Makati City containing an area of FIVE HUNDRED FIFTY FIVE (555) sq. m. more or less.
>
> The ASSIGNOR hereby warrants the existence and legality of the SECURITY as well as its absolute right to assign the same. The ASSIGNOR further warrants that the SECURITY is free from any liens and encumbrances other than the lien herein instituted, and shall not hereafter be transferred or encumbered in any manner without the prior written consent of the ASSIGNEE/LENDER.
>
> x x x
>
> The Assignment shall become a Dation in Payment in the event the Assignor fails to pay in full its obligation under the credit facility by July 15, 2000. In such event, the right of the Assignor to consolidate the aforesaid TCTs under its name shall be vested in the Assignee."

IFSC failed to pay the Claudios on or before July 15, 2000. Hence, pursuant to the aforementioned agreement, the subject properties were conveyed to the Claudios by way of a Dation in Payment.

Rehabilitation of IFSC

On July 21, 2000, IFSC filed a petition for Declaration of Suspension of Payments with the Securities and Exchange Commission (SEC). The Supreme Court issued a directive remanding the petition from the SEC to the Executive Judge of the RTC of Pasig City where it was thereafter raffled to Branch 153. Upon motion of IFSC, the petition for suspension of payment was treated by said court as a petition for rehabilitation. IFSC's rehabilitation plan was approved by said court and Mr. Ernesto C. Enriquez was appointed as Rehabilitation Receiver on January 12, 2001. On March 8, 2002, CIPI was declared insolvent.

Since the Claudios' claim under the abovementioned Deed of Assignment was not included in the Rehabilitation Plan, they wrote a letter dated June 10, 2002 informing IFSC that petitioners have decided to exercise their rights under the Deed of Assignment and demanded Dation in Payment as a mode of settlement of their credit exposure.

On June 22, 2002, Rehabilitation Receiver Ernesto Enriquez submitted a report entitled "As a Matter of Information Regarding Claim of Certain Creditor (Claudios, et al) dated 18 June 2002." Said report informed the rehabilitation court of the claim asserted by our clients.

The rehabilitation court, in an Order dated July 1, 2002, required IFSC to submit a complete and satisfactory explanation on the exclusion of the claims of the Claudios in the rehabilitation plan. They also filed a Manifestation of Claim with Motion to Confirm Validity of Deed of Assignment by Way of Security. In an Order dated June 12, 2003, the rehabilitation court declared the Deed of Assignment By Way of Security as valid, thus:

> "**WHEREFORE**, finding the motion meritorious, the Court hereby declares the Deed of Assignment By Way of Security dated 12 April 2000 executed by the petitioner CIPI Leasing and Finance Corporation (now, IFSC) in favor of the CLAUDIOS, et al. VALID."

On July 21, 2003, IFSC filed a Motion for Reconsideration of the Order dated June 12, 2003, which was denied in the Order dated January 17, 2001, issued by the rehabilitation court.

On March 1, 2005, IFSC filed a Petition for Review before the Court of Appeals. The Court of Appeals, in its Decision dated August 9, 2006, however, dismissed the Petition for Review and ruled in favor of the claim of the Claudios and the validity of the Deed of Assignment By Way of Security. The said decision stated:

> "There is no cogent reason to alter the conclusion reached by the rehabilitation court that the "deed of assignment by way of security executed on April 12, 2000 was valid and binding on petitioner corporation. A corporation may be held in estoppel from denying as against third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority.

x x x

WHEREFORE, the instant petition is DISMISSED. The assailed orders dated June 12, 2003 and January 17, 2004 are hereby AFFIRMED.

The Decision of the Court of Appeals dated August 9, 2006 became final and executory on April 6, 2007 as shown by the Certification of Entry of Judgment issued by the Clerk of Court of the said court.

The Court of Appeals decision was elevated to the Supreme Court via petition for review on certiorari. However, the High Court denied with Finality the said Petition in its Resolution dated February 5, 2014. Therefore, the Claudios for all intents and purposes have acquired title to the properties and are now the incontestable owners thereof.

However, the Claudios cannot secure transfer of ownership of aforesaid properties without a Certificate Authorizing Registration from the BIR. It is on this note that the Claudios is requesting for compromise settlement of the capital gains and documentary stamp taxes by offering to pay 10% of the basic tax pursuant to Section 204 of this Code.

It is also emphasized that the Claudios offered to compromise the said taxes as early as January 11, 2011. However, Atty. Nelson M. Aspe, Deputy Commissioner, Operations Group, informed them that since the Transferor Taxpayer CIPI (now IFSC) or the Claudios (the Transferee) have not been issued any assessment notice, whatever tax liabilities thereon are not yet considered as delinquent, and therefore, the BIR has no jurisdiction to act on the request for compromise.

Notwithstanding the pronouncement of Deputy Commissioner Aspe, the Claudios requested Revenue District Office No. 40, Cubao, Quezon City and Revenue District Office No. 49, North Makati for issuance of formal assessments for the settlement. But the said offices only issued ONETT Computation Sheets but never conducted an investigation to validate its findings of supposed deficiency taxes, nor recommended the issuance of a Letter of Authority to go over, verify and scrutinize the books of accounts and other accounting records of the Transferor Taxpayer CIPI (now IFSC), which by such time has already been declared insolvent.

On September 29, 2016, the Claudios filed a request for abatement on the understanding that, if BIR has not appropriately acted on the request for compromise, the Claudios as Transferees and adjudicated owners of these properties can be entitled to this remedy under Section 204 (B) (1) of the Tax Code. The Commissioner, however, denied the claim on January 10, 2017.

In reply, please be informed that Section 204(A)(2) of the 1997 Tax Code, as amended, states:

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

xxx xxx xxx"

In relation to the afore-quoted provision, Section 3(2)(a) & (e) of RR 30-2002 dated December 16, 2002, as amended by RR 8-2004 dated May 19, 2004, the offer to compromise based on financial incapacity may be accepted upon showing that:

"SECTION 3. Basis for Acceptance of Compromise Settlement. — The Commissioner may compromise the payment of any internal revenue tax on the following grounds:

xxx xxx xxx

2. Financial Incapacity. — The offer to compromise based on financial incapacity may be accepted upon showing that:

(a) The corporation ceased operation or is already dissolved. Provided, that tax liabilities corresponding to the Subscription Receivable or Assets distributed/distributable to the stockholders representing return of capital at the time of cessation of operation or dissolution of business shall not be considered for compromise; or

xxx xxx xxx

(e) The taxpayer has been declared by any competent tribunal/authority/body/government agency as bankrupt or insolvent." (Underscoring supplied)

Based on the documents submitted, as well as, representations made, IFSC appears to be the statutory seller in the foreclosure sales and likewise failed to pay the corresponding capital gains tax on the foreclosure of the Subject Properties. After the

#335-2017
7-4-2017

failure of IFSC to pay in full the Claudios its obligation in the amount of IFSC transferred ownership of the subject properties to the Claudios pursuant to the Deed of Assignment, which in part states:

> "The Assignment shall become a Dation in Payment in the event the Assignor fails to pay in full its obligation under the credit facility by July 15, 2000. In such event, the right of the Assignor to consolidate the aforesaid TCTs under its name shall be vested in the Assignee."

Since IFSC is the seller in the dation in payment transaction, it is the one liable to pay the capital gains tax arising therefrom. However, the financial position of IFSC clearly demonstrates its inability to pay the corresponding capital gains tax and documentary stamp tax. The financial incapacity of IFSC not only prevents the Claudios from at least recouping a portion of its collectibles of from IFSC but also prevents them from transferring the titles of the properties under their names since IFSC is the entity that is rightfully liable under the law to pay the capital gains taxes.

Premises considered, it is clear that the capital gains and documentary stamp taxes on the transfer of the Subject Properties from IFSC to the Claudios may be subject of a compromise settlement on the ground of financial incapacity under Section 204(A)(2) of the Tax Code of 1997, as amended, considering that IFSC was already declared insolvent by the SEC and RTC of Pasig City, provided that the tax liability for the said transactions has already been finally determined via issuance of assessment. Thus, for this purpose, the concerned Revenue District Office (RDO) is hereby directed to proceed with the tax deficiency assessment for the subject transaction.

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 as null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

0075[redacted]2

K-1-JAC