



Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

DOF OPINION NO. 012.2020

**ATTY. EMMANUEL C. ALCANTARA**

Emmanuel C Alcantara & Associates Law Offices  
Unit 1008, 10<sup>th</sup> Floor, National Life Insurance Building  
6762 Ayala Avenue, Makati City

**SUBJECT: Request for Review of BIR Ruling No. OT-0332-2020**

Dear **Atty. Alcantara**:

This refers to the subject letter dated 12 August 2020, as amended ("Request for Review") which you filed with this Department on behalf of Manufacture, Export, Trade, Research Office, Incorporated ("METRO, Inc." or the "Company") to request for the review of Bureau of Internal Revenue ("BIR") Ruling No. OT-0332-2020 dated 16 June 2020, which ruled to deny METRO, Inc.'s request for waiver of income tax, value-added tax, and documentary stamp tax pertaining to the sale of METRO Inc.'s properties in furtherance of its corporate rehabilitation pursuant to Section 19 of Republic Act (RA) No. 10142, otherwise known as the "Financial Rehabilitation and Insolvency Act (FRIA) of 2010".

As a brief background, it is represented that METRO, Inc. is a domestic corporation duly organized and existing in accordance with the laws of the Philippines under SEC Registration No. 147899 with office address at 27<sup>th</sup> floor, Insular Life Corporate Centre Tower 1, Filinvest Alabang, Muntinlupa City.

Since 1988, the Company has been engaged in the business of exporting furniture products, as well as other merchandise related to furniture, to the United States. To address the demands of its clients in Europe and Asia, it decided to acquire Kerson Industries Limited ("Kerson"), a company based in Hong Kong and engaged in the trading of furniture and other related products, to act as its foreign counterpart.

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By the year 1997, the Asian Financial Crisis occurred and the Company responded to address the said financial crisis by shifting its product operations to other Asian countries. Further, it took out loans from banking institutions by reason of the optimistic view of the business, as well as the growing prospects and assured business with Target Corporation in Minneapolis, Minnesota, USA. RCBC granted a Php70 million loan while BDO Unibank granted a Php150 million loan. The Company used all of the assets of its subsidiaries, as well as the respective properties of the members of the Board of Directors as collaterals to the said loan.

Unfortunately, Target Corporation removed METRO, Inc. and Kerson from the list of its supplier matrix due to alleged defects in its products and that it did not pass its quality control. The loss of its largest and primary customer greatly affected the Company, which resulted to difficulties in meeting their obligations. This prompted the Company to file a Petition for Corporate Rehabilitation with the Regional Trial Court of Muntinlupa City (RTC).

A Commencement Order, dated 22 August 2017, was issued by the RTC in the matter of the petition for corporate and individual rehabilitation and suspension of payments filed by petitioners METRO, Inc., 167 Malvar Holdings Corporation, Spouses Fernando and Ermelinda Juan and Spouses Frederick and Ma. Liza Juan. This has the effect of staying or suspending the actions and proceedings in court for enforcement of claims against the debtor. As a result, the Company started to initiate its corporate rehabilitation plan, which includes the disposal and conversion of its properties into cash.

In furtherance of its corporate rehabilitation, the Company filed a Motion for Approval of its Sale of Certain Properties, which consists of six parcels of land. Considering that the said sale of the six parcels of land would redound to the benefit of the Company, and that the said sale was duly approved and consented by its affected creditor, the said transaction was duly approved by the RTC. Consequently, on 1 March 2018, METRO, Inc. and Tropicana Properties and Development Corporation executed a Deed of Absolute Sale covering the sale of the aforesaid properties.



On 6 March 2018, METRO, Inc., through ECA Law, filed a request for ruling with the Commissioner of Internal Revenue for the issuance of a waiver of taxes and fees due to the national government relative to its sale of six parcels of land in furtherance of the objectives of the rehabilitation of the Company pursuant to the FRIA Act of 2010. The BIR, through subject Ruling No. OT-0332-2020, denied METRO, Inc.'s request for waiver of taxes and fees.

Pursuant to DOF Department Order No. 7-2002,<sup>1</sup> METRO, Inc., through ECA Law, filed the subject Request for Review to request for the reversal of the subject BIR Ruling. In particular, the Request for Review prays for the reversal of the BIR's denial of METRO, Inc.'s request for waiver of taxes and fees based on its interpretation of Section 19 of the FRIA Act of 2010 in connection with Section 4(c) of the same Act.

In the subject ruling, it determined that the waiver of taxes, tariffs and customs duties in Section 19 of the FRIA Act of 2010 refers to such claims already due to the government at the time of the issuance of the Commencement Order. Thus, taxes that will be due on the future sale of properties of financially distressed enterprises and individuals are not considered waived for being claims for taxes due to the government after the time of the issuance of the Commencement Order. The pertinent portion of BIR Ruling No. OT-0332-2020 provides:

“In reply, please be informed that Section 19 of RA 10142 provides as follows:

***“SECTION 19. Waiver of Taxes and Fees Due to the National Government and to Local Government Units (LGUs). – Upon issuance of the Commencement Order by the court, and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees, including penalties, interests and charges thereof, due to the national government or to LGUs shall be considered waived, in furtherance of the objectives of rehabilitation.”***

Section 19, RA 10142 above should be read in connection with Section 4 (c) of the same Act which defines “claim” –

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<sup>1</sup> Dated 7 May 2002



***“(c) Claim shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to; (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority: Provided, That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities.” (Emphasis Supplied)”***

xxx xxx xxx.

Since waiver of taxes under Section 19 of RA 10142 refers to such claims already due to the government at the time of the issuance of the Commencement Order, it follows that taxes that will be due on the future sale of properties of financially distressed enterprises and individuals are not considered waived for being claims for taxes due to the government after the time of the issuance of the Commencement Order.”

On the other hand, METRO, Inc. respectfully disagree with the above ruling and asserts in its Request for Review that it is entitled to the waiver of taxes and fees provided under Section 19 of the FRIA Act of 2010 due to the following reasons:

- a. As a consequence of a corporation undergoing a corporate rehabilitation, the FRIA Act of 2010 provides tax relief to the entity;



- b. The Supreme Court issued AM No. 2012-12-11-SC, otherwise known as the “Financial Rehabilitation Rules of Procedure (2013)”, which categorically provides under Rule 2, Section 9(F)<sup>2</sup> thereof that one of the effects of the issuance of the Commencement Order, which retroacts from the date of the filing of the petition, is the exemption of the debtor from liability for taxes and fees, including interest, penalties, and charges due to the national government pursuant to Sec. 19 of the FRIA Law;
- c. The approval of the sale by the Rehabilitation Court is in furtherance of the objectives of the rehabilitation and not considered as future sale of properties; and
- d. The inherent purpose of rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period.

Hence, the issue in the subject Request for Review is whether the taxes and fees due to the National Government relative to the sale by the Company of six parcels of land in furtherance of the objectives of its rehabilitation are deemed waived pursuant to the FRIA Act of 2010.

It is the BIR’s position that Section 19 of the FRIA Act of 2010, when viewed in connection with Section 4(c) of the same Act, connotes that the waiver of taxes, tariffs and customs duties refers to such claims already due to the government at the time of the issuance of the Commencement Order. It infers the same from the fact that “Claim” is defined as all claims or demands of whatever nature or character against the debtor or its property, which includes all claims of the government, including taxes, tariffs and customs duties.

*We do not agree.*

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<sup>2</sup>SEC. 9. EFFECTS OF THE COMMENCEMENT ORDER. – The effects of the court’s issuance of a Commencement Order shall retroact to the date of the filing of the petition and, in addition to the effects of a Stay or Suspension Order described in the foregoing section, shall

xxx      xxx      xxx;

(F) exempt the debtor from liability for taxes and fees, including penalties, interests and charges thereof due to the national government or the LGU as provided in Section 19 of the Act.

xxx      xxx      xxx.

Section 19 of the FRIA Act of 2010 does not touch upon nor has any relation to “Claims” as set out under the law. We see no point in connecting the definition of “Claim” with the waiver of taxes and fees provision of the same law.

We deem it more fitting to relate Section 19 with the provision under Section 16 of the same law which provides that, upon issuance of the Commencement Order, the BIR shall be directed to file and serve on the debtor its comment on or opposition to the petition or its claim/s against the debtor. This, in effect, recognizes that the claims already due to the BIR at the time of the issuance of the Commencement Order shall be taken into account in the conduct of the rehabilitation proceedings and in the order of payment. This scenario is antithetical to the position that claims already due to the government at the time of the issuance of the Commencement Order shall be considered waived.

This is bolstered by the fact that Section 62(s) states that the Rehabilitation Plan shall, as a minimum, arrange for the **payment** of all outstanding taxes and assessment, or an **adjusted amount pursuant to a compromise settlement** with the BIR or other applicable tax authorities. In addition, Section 62(t) also requires that the Rehabilitation Plan include a certified copy of a certificate of tax clearance or evidence of a compromise settlement with the BIR. These circumstances necessarily signify that outstanding taxes and assessment must be paid and is not the taxes and fees contemplated to be waived under Section 19 of the same law.

In fact, the FRIA ACT of 2010 is clear and explicit in providing for the period to which the waiver of taxes and fees shall relate to. Thus:

**“SECTION 19. Waiver of Taxes and Fees Due to the National Government and to Local Government Units (LGUs). – Upon issuance of the Commencement Order by the court, and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees, including penalties, interests and charges thereof, due to the national government or to LGUs shall be considered waived, in furtherance of the objectives of rehabilitation.”** (Emphasis supplied)



This leads to no other conclusion that the waiver of taxes and fees under the FRIA Act of 2010 refer to those that are imposed upon the issuance of the Commencement Order by the court, and until the approval of the Rehabilitation plan or dismissal of the petition, whichever is earlier.

Taking all the foregoing into account, the taxes and fees imposed upon the issuance of the Commencement Order and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, shall be considered waived pursuant to Section 19 of the FRIA Act of 2010, subject to the condition that it is made in furtherance of the objectives of rehabilitation.

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.

Thank you.

Sincerely yours,

  
**CARLOS G. DOMINGUEZ**  
Secretary of Finance



OCT 21 2020

 **DEPARTMENT OF FINANCE**  
Republic of the Philippines



**CC** **Commissioner Caesar R. Dulay**  
Bureau of Internal Revenue