REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sections 27(D)(5), 98, 105, and 196 of the Tax Code of 1997, as amended
BIR Ruling No. OT-627-2020
OT- 010-2024
FEB 27 2024

JOSEPHINE YU

Madam:

This refers to your request for confirmation that the reconveyance of properties under a Revocable Trust from the trustee to the beneficial owners, and the consolidation of ownership to the latter is not subject to internal revenue taxes.

Background:

On May 12, 2008, Josephine Yu (herein referred as "Trustor") entered into a Trust Agreement with BDO Private Bank, Inc. – Wealth Advisory and Trust Group ("BDOPB"). By virtue of the Trust Agreement, the Trustor conveyed to BDOPB an amount in cash in trust, nevertheless, reserving unto herself the right to revoke, amend, annul, and cancel the trust created thereby ("Revocable Trust"). Pursuant to the terms of the Trust Agreement, BDOPB purchased with the funds transferred to it in trust the following real properties ("subject properties"):

Transfer/Condominium Certificate No. (TCT/CCT No.)	Location	Area (sq.m.)	Type
(			Residential Condominium Unit with two (2) parking slots
–			Residential Land with Improvement

BDOPB, being the trustee and the legal title holder, has caused the registration of the CCT No.) and TCT No. in the name of BDO PRIVATE INC., AS TRUSTEE FOR TRUST ACCOUNT NO. '

The Trustor now wants the subject properties to be transferred in her name. Accordingly, BDOPB and the Trustor executed a Deed of Conveyance dated October 6, 2022, so that the legal and beneficial titles will be consolidated in the Trustor's name. There was no monetary or valuable consideration for this consolidation of titles. Hence, this request.

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In reply, please be informed as follows:

Capital Gains Tax

Section 27 (D) (5) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides:

> *"SEC. 27. Rates of Income tax on Domestic Corporations. –*
>
> *xxx xxx xxx*
>
> *(D) Rates of Tax on Certain Passive Incomes. –*
>
> *xxx xxx xxx*
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> *(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 of fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, of such lands and/or buildings."*

Under the above-quoted provision, capital gains presumed to have been realized from the sale, exchange, or disposition of lands and/or buildings which are not actually used in the business of the corporation and are treated as capital assets shall be taxed at the rate of 6% based on the gross selling price or the fair market value thereof, whichever is higher. In the instant case, however, there is no sale, exchange or disposition of real property involved, since the Trustor is the real owner of the subject properties, while BDOPB merely acted as the Trustee. The conveyance by the Trustee in favor of the Trustor of the subject properties which the former acquired by virtue of the Trust Agreement is not to be treated as another transfer separate and distinct from the sale between the original owner and the Trustee. The conveyance is merely to be treated as a continuation and confirmation of title in favor of the ultimate and real beneficiary of the subject properties. Likewise, the transaction is not predicated by a valuable consideration considering that the reconveyance is ostensibly just for the return of the properties to the legal owner and merely acknowledges, confirms and consolidates the legal title and beneficial ownership over the properties in the name of the Trustor.

Accordingly, the transfer of title of the subject properties by the Trustee in favor of the Trustor, who is the beneficial owner thereof, is not subject to capital gains tax (CGT) imposed under Section 27 (D) (5) of the Tax Code, as amended, or to creditable withholding tax (CWT) prescribed in Revenue Regulations (RR) No. 2-98, as amended, implementing Section 57 (B) of the Tax Code, as amended.[1]

Documentary Stamp Tax

Under Section 196 of the Tax Code, as amended, the deeds or documents subject to documentary stamp tax (DST) imposed therein are those where the realty sold shall be granted,

[1] BIR Ruling No. 779-2018 dated May 8, 2018

assigned, transferred, or otherwise conveyed to a purchaser or purchasers or to any other person or persons designated by such purchaser or purchasers, thereby excluding from its purview the instant case considering that the supposed purchaser is actually the owner thereof. Also, under Section 191 of RR No. 26, otherwise known as the "Documentary Stamp Tax Regulations", conveyances to a trust without valuable consideration, or from a trustee to a *cestui que* trust without valuable consideration are not subject to tax. Since the reconveyance of the subject properties by the BDOPB in favor of the Trustor is a transfer of ownership to the real owner thereof in connection and in recognition of a trust, the said transfer, therefore, is not subject to the DST imposed under Section 196 of the Tax Code, as amended. However, the notarial acknowledgment to the Release of Trust is subject to the ₱30.00 DST as imposed under Section 188 of the same Code.

Donor's Tax

Pursuant to Section 98 of the Tax Code, as amended, donor's tax is generally imposed on the transfer by any person, resident or non-resident, of property by gift. The donor's tax applies, whether such transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. The essential elements of a valid donation are: (1) the reduction of the patrimony of the donor, (2) the increase in the patrimony of the donee, and (3) the intent to do an act of liberality (*animus donandi*). In this case, however, there is no intention to donate on the part of BDOPB since the reconveyance merely transfers the ownership of the subject properties to the true buyer/owner. Hence, the transfer of the properties to the Trustor by BDOPB is exempt from the donor's tax imposed under Section 98 of the Tax Code, as amended

Value-added Tax

Finally, the reconveyance is not subject to value-added tax (VAT) because the said realty is not held primarily for sale to customers or for lease in the ordinary course of business.[2]

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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[2] BIR Ruling No. 779-2018 dated May 8, 2018