REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Secs. 40(C)(2) & (c), NIRC
BIR Ruling No. 101-12
-BIR Ruling No. 549-12
CT- 110-2021
APR 19 2021

DREFTAD PROPERTIES, INCORPORATED
Lot 33 Block 1 Insular Village
Vicente Hizon Davao City, Davao del Sur

Attention: **Ms. Margaret T. Go-Yu**
Ms. Elizabeth T. Go

Gentlemen:

This refers to your letter dated July 5, 2017 requesting for confirmation of your opinion on the tax implication of the transfer of the real property by Ms. Margaret T. Go-Yu in favor of Dreftad Properties, Inc., solely in exchange for shares of stocks of the latter. It is your position that such transfer will neither result in a taxable gain profit pursuant to Section 40 (C)(2) of the National Internal Revenue Code of 1997 (Tax Code), as amended.

It appears that Dreftad Properties, Inc. is a corporation duly organized and existing under Philippine laws with principal office address at Lot 33, Block 1, Insular Village, Vicente Hizon, Davao City, Davao del Sur. It has an authorized capital stock consisting of Eighteen Thousand (18,000) shares with par value of One Thousand Pesos (P1,000.00) per share, all of which are issued and outstanding. Out of the issued and outstanding shares of stocks, 4,320 shares were subscribed by Ms. Margaret T. Go-Yu, one of the incorporators of Dreftad Properties, Inc. and sole owner of a parcel of land located at Lot 33, Block 1, Insular Village, Barangay Vicente Hizon, Davao City with Transfer Certificate of Title (TCT) No.

On April 12, 2017, a "Deed of Assignment" was executed by Ms. Margaret T. Go-Yu for the assignment of TCT No. in favor of Dreftad Properties, Inc. in compliance with her covenant to transfer the said properly in exchange for the 4,320 shares of stock that she subscribed.

The capital and shareholding structure of Dreftad Properties, Inc. as indicated in the Articles of Incorporated is shown below:

Incorporator's Name	No. of Shares Subscribed	Amount Subscribed (Php)	Paid	Percentage Ownership
Margaret T. Go-Yu	4,320	4,320,000.00	4,320,000.00	24%
Clement L. Yu	4,320	4,320,000.00	4,320,000.00	24%
Zachary Kenneth G. Yu	4,320	4,320,000.00	4,320,000.00	24%
Andrew Patrick G. Yu	4,320	4,320,000.00	4,320,000.00	24%
Elizabeth T. Go	720	720,000.00	720,000.00	4%
TOTAL	**18,000**	**18,000,000.00**	**18,000,000.00**	**100%**

In reply, please be informed that pursuant to Section 40 (C)(2) and (6)(c) of the Tax Code, as amended, no gain or loss shall be recognized if property is transferred to a corporation by a person, in exchange for stock in such a corporation of which as result of such exchange, said person, alone or together with others, not exceeding four persons, gains control of said corporation. The term "control" shall mean ownership of stocks in a corporation possessing at least 51% of the total voting power of all classes of stocks entitled to vote. Control is determined by the amount of stocks received i.e., total subscribed by the transferors. In determining the 51% stock ownership, only those persons who transferred property for stocks in the same transaction may be counted up to a maximum of five.

Ms. Margaret T. Go-Yu, however, did not gain control of the transferee corporation since she only owns 24% of the company's total voting stocks. Consequently, gain or loss shall be recognized on her assignment/transfer of property in exchange for shares of stock of Dreftad Properties, Inc.

In view of the foregoing, this Office is of the opinion and hereby holds as follows:

a. The assignment of the real property by Ms. Margaret T. Go-Yu does not qualify as a tax-free exchange under Section 40 (C)(2) of the Tax Code, as amended, hence, the gain or loss shall be recognized on such transaction under Section 39 and 40 (A). Capital gains tax as imposed by Section 24 (D)(1) of the same Tax Code shall be due from the transferor;

b. Likewise, on the transfer of real properties, transferor shall be liable for documentary stamp tax under Section 196 of the Tax Code, as amended, based on the higher of: (i) the consideration contracted to be paid for such real property, and (ii) the fair market value as determined in accordance with Section 6 (E) of the same Tax Code;

c. The original issuance of shares of Dreftad Properties, Inc. subscribed by Ms. Margaret T. Go-Yu shall also be subject to documentary stamp tax imposed by Section 175 of the Tax Code, as amended; and

d. Ms. Margaret T. Go-Yu is not subject to Value-Added Tax (VAT) on the transfer of her residential property as it appears that the subject property is a capital asset.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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