May 18, 2021

BIR RULING NO. OT-166-21

Sec. 24 (C), 1997 Tax Code, as amended; BIR Ruling No. 31-99

Pelaez Gregorio Gregorio & Lim
Attorneys & Counsellors at Law
6th Floor Padilla Building, F. Ortigas Jr. Road
Ortigas Center, 1605 Pasig City, Metro Manila

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 5, 2019 requesting on behalf of your client, **Cyanean Ventures Corporation** for a ruling that the transfer and/or assignment of shares of stocks ("Cyanean Shares") by BBB, CCC and DDD ("Assignors-Trustees") in favor of the real beneficial owner thereof, EEE ("EEE"), is not subject to income tax, capital gains tax (CGT) and documentary stamp tax (DST).

As represented, the Assignors-Trustees executed on March 9, 2011 an Indemnity Agreement and Deed of Acknowledgment and Declaration of Trust with Deed of Assignment in favor of EEE for all Cyanean Shares registered in their respective names covered and evidenced by Stock Certificate Nos. _____, and _____. In said documents, the Assignors-Trustees manifested, acknowledged and confirmed that the capital and funds used to acquire the aforesaid shares belonged to EEE and that the said stock certificates were merely put in their names as trustees for the benefit of EEE. It further stated that Assignors-Trustees hold such stock certificates in trust for EEE who is the real beneficial owner of such stock certificates and they waive whatever rights, title and interest they may have over said certificates. Moreover, said document states that for and in consideration of the fact that the capital and funds used to acquire the said shares belonged to said beneficial owner and in the implementation of the trust reposed by said EEE, the Assignors absolutely assign, transfer, return and convey the said Stock Certificate Nos. _____, and _____ of Cyanean Ventures Corporation to EEE free from any lien and/or encumbrances of any nature whatsoever.

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In reply, please be informed as follows:

1. Section 24 (C) of the 1997 Tax Code, as amended, provides —

> ***"(C) Capital Gains from Sale of shares of Stock not Traded in the Stock Exchange***. [1] *— The provisions of Section 39(B) notwithstanding, a final tax at the rate of fifteen percent (15%) is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange."*

In several cases, this Office had occasion to rule that the transfer of shares of stocks in a domestic corporation held by a Trustee in favor of the Trustor without monetary consideration is not subject to income tax and CGT since the transfer is merely a confirmation of title/ownership in favor of the beneficial owner hence, not a sale, barter or exchange of the said shares of stock. [2]

Applying the foregoing, the transfer of the Cyanean Shares from the Trustees, BBB, CCC and DDD to the Trustor, EEE, the real owner thereof, without monetary consideration and by virtue of the Indemnity Agreement and Deed of Acknowledgment and Declaration of Trust with Deed of Assignment is not subject to income tax and CGT.

2. Well-settled in our jurisprudence is the fact that 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).

Clearly, there is no intention on the part of BBB, CCC and DDD to donate to EEE the Cyanean Shares which the former held in trust for the latter as shown by the execution of the Indemnity Agreement and Deed of Acknowledgment and Declaration of Trust with Deed of Assignment. Thus, the aforesaid transfer and/or assignment of the subject shares will not be subject to gift tax since there is no intention to donate, and the transaction is merely to be treated as a continuation and confirmation of ownership in favor of the ultimate and real beneficiary of the Cyanean Shares.

3. Under Section 191 of the Documentary Stamp Tax Regulations (Revenue Regulations No. 26), the conveyance of property to a trustee is exempt from DST. Section 191 of said Regulations provides:

> "Section 191. Conveyance to trustees or from trustee to *cestui que trust*, without consideration. — Conveyances to a trustee without valuable consideration, or from a trustee to a *cestui que trust* without valuable consideration are not subject to tax."

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Accordingly, the transfer of the said Cyanean Shares is not subject to DST imposed under Section 176 of the 1997 Tax Code, as amended. However, the notarial acknowledgment is subject to the DST of P30.00 pursuant to Section 188 of the same Tax Code as amended by Republic Act No. 10963 or the TRAIN Law.

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. The capital gains tax on sale of shares of stock not listed and not traded in a local stock exchange was increased from 5%/10% to 15% by RA 10963.
2. BIR Ruling Nos. 31-99 dated 19 March 1999, DA-(C-315) 776-09 dated 14 December 2009; DA-392-08 dated 30 June 2008; DA-484-06 dated 9 August 2006; DA-291-2005 dated 27 June 2005; and -485-2004 dated 10 September 2004.

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