June 8, 2021

BIR RULING NO. OT-203-21

Sec. 24 (D) (1), NIRC of 1997, as amended;
BIR Ruling No. 779-2018

AAA &
BBB

_____

Gentlemen :

This refers to your letter dated January 16, 2020 requesting for tax exemption on the reconveyance of title of real property to the trustor from the trustee.

As represented, sometime in August 1999, spouses AAA and BBB (spouses AABB) purchased a condominium unit located at _____, Rockwell Center, Makati City. On September 15, 1999, spouses AABB established a trust account with the Trust Department of PentaCapital Investment Corporation through the execution of a Trust Agreement subjecting the aforementioned condominium unit in trust with the latter as Trustee. Condominium Certificate of Title No. 71165 was then issued in favor of PentaCapital Investment Corporation. On July 17, 2014, PentaCapital Investment Corporation surrendered its trust license to the Bangko Sentral ng Pilipinas. In the meantime, spouses AABB decided to start transferring their properties in the name of their children which initially requires them to transfer the properties, among others, the subject condominium unit in Makati, under trust in their own name. Thus, a Termination of Trust and Transfer to Beneficiary was executed on March 27, 2018.

In reply, please be informed that Section 24 (D) (1) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides, *viz.*:

> *"Section 24. Income Tax Rates. —*
>
> xxx xxx xxx
>
> *(D) Capital Gains from Sale of Real Property. —*
>
> *(1) In General. — The provisions of Section 39(B) notwithstanding, a final tax*

Copyright 2021 CD Technologies Asia, Inc.

of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the Taxpayer."

Records disclosed, however, that there is no sale, exchange or disposition of real property involved, since spouses AABB are the real owners of the subject realty, while PentaCapital Investment Corporation merely acted as Trustee.

Moreover, the transaction is not predicated by a valuable consideration considering that the reconveyance is ostensibly just for return of the property to the legal owner and merely acknowledges, confirms and consolidates the legal title and beneficial ownership over the property in the name of spouses AABB, the Trustors.

In BIR Ruling No. 031-99 dated March 19, 1999, this Office had occasion to rule that:

". . . 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."

Accordingly, the transfer of title of the afore-stated property by the Trustee in favor of the beneficiaries, who are the beneficial owners thereof is not subject to capital gains tax imposed under Sec. 24 (D) (1) of the NIRC of 1997, as amended, or to the creditable withholding tax prescribed in Revenue Regulations (RR) No. 2-98, as amended, implementing Section 57 (B) of the NIRC of 1997, as amended. [1]

Under Section 196 of the NIRC of 1997, as amended, the deeds or documents subject to the documentary stamp tax (DST) imposed therein are those where the realty sold shall be granted, 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 purchasers are actually the owners thereof. Furthermore, under Section 191 of Revenue Regulations 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

Copyright 2021 CD Technologies Asia, Inc.

subject to tax. [2]

Since the reconveyance of the afore-stated property by the Trustee in favor of spouses AABBB, the real owners thereof, is in connection and in recognition of a trust, the said transfer is not subject to the DST imposed under Section 196 of the NIRC of 1997, as amended. However, the notarial acknowledgment to said deed of reconveyance is subject to the P30.00 DST as imposed under Section 188 of the NIRC of 1997, as amended.

Section 98 of the NIRC of 1997, as amended, provides that a 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, there is no intention to donate on the part of the Trustee since the reconveyance merely transfers the ownership of the subject realty to the true buyers/owners. Hence, the transfer of the property to spouses AABB by the Trustee is exempt from the donor's tax imposed under Section 98 of the same Tax Code.

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. [3]

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. BIR Ruling No. 779-2018 dated May 8, 2018.
2. *Ibid.*
3. BIR Ruling No. 779-2018 dated May 8, 2018.

Copyright 2021 CD Technologies Asia, Inc.