January 28, 2020

BIR RULING NO. OT-025-20

Secs. 24 (C), 98, and 175 of the National
Internal Revenue Code of 1997 as amended;
BIR Ruling No. 031-1999

Araneta & Faustino
Unit 203 Le Metropole Building
Corner De La Costa and Tordesillas Streets
Salcedo Village, Makati City 1227

Attention: *AAA*

BBB

Gentlemen :

This refers to your letter dated October 20, 2017, requesting on behalf of your client, TWA, Inc. ("TWA" for brevity), for confirmation of your opinion that the assignment/transfer of shares of stock of a domestic corporation from the Trustee of such shares of stock to the Beneficial Owner, without monetary consideration, is exempt from capital gains tax ("CGT"), documentary stamp tax ("DST"), and donor's tax. Also, you request confirmation of your opinion that TWA's Corporate Secretary may transfer such shares to the Beneficial Owner upon the issuance of a favorable ruling without the necessity of securing a tax clearance.

Background:

TWA is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines, under Securities and Exchange Commission ("SEC") Company Registration No. AS94-010621 and with principal office address at No. 47 D. Tuazon Street, Quezon City.

In 2005, CCC ("CCC" for brevity), Filipino, of legal age, with postal address at _____, subscribed to and paid for 2,992,000 shares of stock of TWA. However, the shares were issued and registered in the name of DDD ("DDD" for brevity), Filipino, of legal age, and with postal address at _____, in her capacity as

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trustee, and covered by a Deed of Trust executed on August 04, 2005 by DDD and CCC.

The Deed of Trust stipulated that the said shares were placed in the name of DDD in trust for and for the benefit of CCC as the beneficial owner, and that all dividends declared on said shares, as well as all kinds of income, fruits, interests and other distributions accruing thereon shall accrue in favor of CCC as the beneficial owner.

CCC now intends to have the shares registered in her name in the records of TWA and has instructed DDD to transfer the shares to her. Thus, on October 11, 2017, pursuant to CCC's instruction, DDD executed a Deed of Assignment of the shares in favor of CCC.

On the basis of the foregoing, you now request for confirmation of your opinion that the assignment/transfer of the shares from DDD to CCC, without monetary consideration, is exempt from CGT, DST, and donor's tax, and that TWA's Corporate Secretary may transfer such shares to CCC upon the issuance of a favorable ruling without the necessity of securing a tax clearance.

In reply thereto, please be informed that the transfer of the afore-stated shares of stock by DDD in favor of the beneficiary, CCC, who is the beneficial owner thereof, is not subject to CGT imposed under Section 24 (D) (1) of the National Internal Revenue Code (NIRC) of 1997, as amended, considering that the conveyance is not motivated by a valuable consideration and merely acknowledges and confirms the legal title and beneficial ownership over the shares of stock in the name of CCC, the trustor. [1]

Likewise, it is not subject to donor's tax imposed under Section 98 of the NIRC of 1997, as amended, since the transfer merely consolidates the legal title and beneficial ownership to CCC, the trustor, who is the original subscriber of the 2,992,000 shares of stock of TWA.

In BIR Ruling No. 031-99 dated March 19, 1999, this Office has already ruled 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."*

Moreover, the Deed of Assignment executed to terminate the trust relationship between DDD and CCC and the transfer of ownership over the subject shares of stock is not subject to DST imposed under Section 196 of the NIRC of 1997, as amended. Nevertheless, the notarial acknowledgment to such instrument is subject to the DST of P15.00 [2] under

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Section 188 of the same Code.

It is, however, understood that this Ruling is never intended, and shall not be construed, as giving authority to the Corporate Secretary of TWA to effect transfer of the Certificate of Stocks in the name of CCC without the necessary Certificate Authorizing Registration (CAR) issued by this Bureau. In this regard, this Ruling shall be presented to the Revenue District Office (RDO) concerned in order for the latter to issue the CAR as prescribed in Revenue Memorandum Circular (RMC) No. 37-2012.

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 null and void.

Very truly yours,

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

Footnotes

1. BIR Ruling No. 051-2015 dated February 24, 2015.
2. Old rate was used since the transaction took place prior to the effectivity of Republic Act (RA) No. 10963.

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