January 24, 2020

BIR RULING NO. OT-027-20

Sec. 24 (D) (1); RR 16-05; RR 11-18; 61; BIR Ruling No. 021-02; BIR Ruling No. 013-05

Tan Concepcion & Que Law Offices
Suites 1501-1502 The Orient Square Building
F. Ortigas, Jr. Road, Ortigas Center, Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 23, 2018 requesting on behalf of your client, R&P Land Development Co., for confirmation of your opinion on the tax incidents of the transactions described below.

R&P Land Development Co., a partnership formed by Spouses BBB ("BBB") and CCC ("CCC"), was duly registered with the Securities and Exchange Commission (SEC) on April 19, 1966 with a fixed term of 30 years for the purpose of engaging in the realty business.

It is represented that on February 25, 1993, BBB passed away leaving CCC and their 6 children as heirs. As a consequence of BBB's demise, the partnership was dissolved pursuant to Article 1830 (5) of the Civil Code of the Philippines.

At the time of BBB's passing, the partnership had the following real properties:

Location	Transfer Certificate of Title Nos.	Area (in sq. m.)
Antipolo City	166959	184
Antipolo City	166961	184
Antipolo City	166962	187
Antipolo City	166963	182
Antipolo City	166964	176
Antipolo City	166965	199

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Antipolo City	166966	199
Antipolo City	166978	253
Antipolo City	166979	245
Antipolo City	166985	182
Antipolo City	166987	201
Antipolo City	166993	211
Antipolo City	166994	218
Antipolo City	166995	225
Antipolo City	167001	213
Antipolo City	167002	205
Antipolo City	167010	214
Antipolo City	167016	212
Antipolo City	167017	218
Antipolo City	167018	224
Antipolo City	167024	218
Antipolo City	167028	202
Antipolo City	167030	195
Antipolo City	167033	183
Antipolo City	167036	1,152

The surviving partner, CCC has, to date, failed to wind up the affairs and to liquidate the partnership. On account of her advanced age, and in order to facilitate the winding up, settlement and liquidation of the partnership, CCC has designated/appointed DDD, one of her children, as Trustee-in-Liquidation through a Letter of Appointment dated March 30, 2018. The designation of DDD is with the unanimous consent and approval of her 5 siblings who, together with her and CCC, are the heirs of BBB and successors-in-interest over his net share in the partnership assets.

The afore-mentioned real properties of the partnership, together with such other assets as may hereafter be identified, will be conveyed to the Trustee-in-Liquidation in trust and for the benefit of the creditors, the partners, their heirs and successors-in-interest, and such other persons who may have interests therein.

As Trustee-in-Liquidation, DDD shall gather and take custody and legal title over all partnership assets, including receivables; determine liabilities of the partnership, including taxes that may be due to the Government; identify partnership creditors and validate their claims; sell off all or a portion of the partnership assets; pay off partnership liabilities either in cash from the sales proceeds or through the conveyance of partnership assets; and finally, distribute the remaining partnership assets, either in cash or properties, to the surviving

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partner, CCC, and the heirs of BBB.

A Deed of Transfer/Conveyance to Trustee-in-Liquidation was executed on December 14, 2018 between R&P Land Development Co. (Trustor) and DDD (Trustee) which would transfer to the latter legal title over the partnership properties in trust and for the benefit of the creditors, the partners, their heirs and successors-in-interest, and such other persons who may have interests therein.

In connection with the foregoing, you request confirmation of your opinion as follows:

1. Since there will be no consideration for the transfer/conveyance of the above-mentioned properties to the Trustee-in-Liquidation, no corporate income tax shall accrue and become collectible under the Tax Code and pertinent Regulations, either by way of capital gains tax (CGT) or creditable withholding tax (CWT).

2. The transfer/conveyance of the above-mentioned properties to the Trustee-in-Liquidation will not be subject to the 12% value-added tax (VAT). Under Section 4.106-3 of Revenue Regulations (RR) No. 16-2005, "transmission of property to a trustee shall not be subject to VAT if the property is to be merely held in trust for the trustor and/or beneficiary."

3. There being no donative intent on the part of the partnership, the transfer/conveyance will not be subject to the donor's tax.

4. The Deed of Transfer/Conveyance executed by the partnership will not be subject to the documentary stamp tax (DST) imposed under Section 196 of the Tax Code there being no monetary consideration involved. The same will be subject only to the P30.00 DST under Section 188 of the Tax Code, as amended.

In reply, please be informed, as follows:

1. Section 27 (D) (5) of the Tax Code of 1997, as amended, provides that a final tax of six percent (6%) is hereby imposed on the gains 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 or fair market value as determined in accordance with Section 6 (E) of the said Code, whichever is higher, of such lands and/or buildings.

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On the other hand, Section 2 (F) of RR No. 11-2018, provides that a creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6 (E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer.

In the instant case, considering that there is no transfer of ownership, but rather a trust was created by virtue of the execution of Deed of Transfer/Conveyance to Trustee-in-Liquidation on the above-mentioned real properties in favor of the Trustee-in-Liquidation, with no monetary consideration involved for such transfer, this Office is of the opinion as it hereby holds that the transfer of the aforesaid properties in favor of the Trustee-in-Liquidation will not be subject to capital gains tax (CGT) imposed under Section 27 (D) (5) of the Tax Code of 1997 nor to the creditable withholding tax (CWT) prescribed in RR No 11-2018.

2. Section 4.106-3 of RR No. 16-2005, as amended, provides that transmission of property to a trustee shall not be subject to VAT if the property is to be merely held in trust for the trustor and/or beneficiary. Thus, the conveyance between R&P Land Development Co. and DDD is not subject to the 12% VAT. The said Section states —

xxx xxx xxx

> "Transmission of property to a trustee shall not be subject to VAT if the property is to be merely held in trust for the trustor and/or beneficiary. However, if the property transferred is one for sale, lease or use in the ordinary course of trade or business and the transfer constitutes a completed gift, the transfer is subject to VAT as a deemed sale transaction pursuant to Sec. 4.106-7(a)(1) of these Regulations. The transfer is a completed gift if the transferor divests himself absolutely of control over the property, *i.e.*, irrevocable transfer of corpus and/or irrevocable designation of beneficiary."

3. Moreover, the above transaction is not subject to donor's tax imposed under Section 28 of RA No. 10963, as there is no intention to donate on the part of R&P Land Development Co. However, should the Trustee-in-Liquidation, sells or conveys by *dacion en pago* any of the above-mentioned properties either to any creditor or any person in the future, the deed of transfer to be executed by the latter will be subject to the CGT or CWT as the case may be, to the VAT, if applicable, as well as to the DST under the aforementioned Tax Code provisions and revenue issuances.

4. Section 181 of Regulations No. 26, as amended, provides that a deed executed by a debtor covering an assignment of property to a trustee to be held for the benefit of a creditor is not subject to tax. However, it also provides that when the trustee sells or conveys

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such property either to the creditor or any person, the deed executed by him is taxable. Thus, Section 181 of Regulations No. 26 states that —

> "SEC. 181. Deed to trustee for benefit of creditor. — A deed executed by a debtor covering an assignment of property to a trustee to be held for the benefit of a creditor is not subject to tax. When, however, the trustee sells or conveys such property either to the creditor or any other person, the deed executed by him is taxable."

Accordingly, the Deed of Transfer/Conveyance to Trustee-in-Liquidation executed by and between R&P Land Development Co. (Trustor) and DDD (Trustee-in-Liquidation), for the benefit of the creditors, is not subject to the DST imposed under Section 69 of Republic Act (RA) No. 10963 ("TRAIN Law"). However, the acknowledgment thereof is subject to the P30.00 documentary stamp tax prescribed in Section 61 of RA No. 10963.

It should be emphasized, however, that the net share and interests of BBB in the assets of the partnership (R&P Land Development Co.) are subject to the estate tax under Sections 77 to 78 of Presidential Decree (PD) No. 1158, as amended, including penalties and interests, if any, pursuant to Sections 248 and 249 of PD No. 1158, the governing law at the time of death of BBB.

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

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