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

Sections 27 (D) (5) & 99 of the National Internal Revenue Code of 1997, as amended;
BIR Ruling No. 779-18
OT-323.2022
JUN 29 2022

MOLDEX REALTY, INC.
Moldex Building, Ligaya St., cor. West Avenue
Quezon City, Philippines

Attention: **Atty. Jowel T. Cloma**
Head, Legal Department

Gentlemen:

This refers to your letter dated June 28, 2018 requesting on behalf of Clothilda Ann B. Roman, Mervin M. Banta, Ferdinand C. Libunao, Tomi L. Tavanlar, Rico R. Abellera, Rey Ignacio M. Diaz, and Moldex Realty, Inc. (MRI) for a ruling that the conveyances of the titles of the properties from MRI to several trustees is not subject to capital gains tax (CGT), creditable withholding tax (CWT), value-added tax (VAT), donor's tax and documentary stamp tax (DST).

It is represented that MRI entered into several trust agreements with the above-enumerated persons, to wit:

1. A trust agreement with Clothilda Ann B. Roman, by virtue of a Deed of Trust dated 11 December 2017, whereby MRI conveyed, without any monetary consideration, to Roman, the legal title of Condominium Unit No. with CCT No. located at The Grand Towers (TGT), located at 790 P. Ocampo Sr. Street, Malate, Manila.

2. A trust agreement with Mervin M. Banta, by virtue of the Deed of Trust dated 11 December 2017, whereby MRI conveyed, without any monetary consideration, to Banta, the legal title of Condominium Unit No , with CCT No. located at The Grand Towers.

3. A trust agreement with Ferdinand C. Libunao, by virtue of the Deed of Trust dated 11 December 2017, whereby MRI conveyed, without any monetary consideration, to Libunao, the legal title of Condominium Unit No. with located at The Grand Towers.

4. A trust agreement with Tomi L. Tavanlar, by virtue of the Deed of Trust dated 11 December 2017, whereby MRI conveyed, without any monetary consideration, to Tavanlar, the legal title of Condominium Unit No. with Certificate Authorizing Registration (CAR) No. located at The Grand Towers.

5. A trust agreement with Rico R. Abellera, by virtue of the Deed of Trust dated 11 December 2017, whereby MRI conveyed, without any monetary consideration, to Abellera, the legal title of Condominium Unit No. with CAR No. located at The Grand Towers.

6. A trust agreement with Rey Ignacio M. Diaz, by virtue of the Deed of Trust dated 11 December 2017, whereby MRI conveyed, without any monetary consideration, to Diaz, the legal title of Condominium Unit No. with CAR No. located at The Grand Towers.

It is further represented that MRI entered into these Deeds of Trust in order to transfer or confer legal title, without any consideration, to the trustees for the sole purpose of qualifying these persons to be elected as members of the Board of Trustees of The Grand Towers Manila Condominium Association, Inc. There is no actual transfer of real properties since the individual trustees acquired these properties by virtue of separate Trust Agreements. The individual trustees acknowledge and recognize that they are holding titles to said properties for and in behalf of their true and ultimate owner, MRI.

In view of the foregoing, you now request for a ruling that the conveyance of the titles of the aforesaid properties from MRI to the trustees is not subject to CGT, CWT, VAT, donor's tax and DST.

In reply, please be informed that under Section 27 (D) (5) of the National Internal Revenue Code (Tax Code) of 1997, as amended, capital gains presumed to have been realized from the sale, exchange, or disposition of lands and/or buildings which are not actually used in the business of the corporation and are treated as capital assets shall be taxed at the rate of 6% based on the gross selling price or the fair market value thereof, whichever is higher. In the instant case, however, there is no sale, exchange or disposition of real property involved, since MRI is the real owner of the subject condominium units, while the individuals, namely, Clothilda Ann B. Roman, Mervin M. Banta, Ferdinand C. Libunao, Tomi L. Tavanlar, Rico R. Abellera, and Rey Ignacio M. Diaz, acted merely as trustees.

Accordingly, the transfer of titles over the subject condominium units from MRI to the individual trustees, without any monetary consideration and by virtue of the Deed of Trust each individual had executed separately, which effectively acknowledges the existence of a trust by and between them and MRI, is not subject to the CGT nor to the CWT prescribed under Revenue Regulations No. 2-98, as amended. (BIR Ruling No. 108-98 dated June 29, 1998)

Furthermore, the said transfer is not subject to the donor's tax imposed under Section 99 of the Tax Code of 1997, as amended, since there is no donative intent on the part of MRI to donate the subject properties to the trustees considering that it was made clear in the Deeds of Trust that the trustees are merely holding said properties for and on behalf of MRI.

Considering that the conveyance by MRI of the subject properties is pursuant to an express trust, it cannot be considered a transfer made in the ordinary course of trade or business, hence, not be subject to VAT imposed under Section 106 of the Tax Code of 1997, as amended.

Finally, 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 subject to tax.

From the foregoing and since the above conveyances of the condominium units by MRI to the trustees are in connection and in recognition of an express trust, the said transfers, therefore, are not subject to the DST imposed under Section 196 of the Tax Code of 1997, as amended. However, the notarial acknowledgements to the Deeds of Trust executed by MRI in favor of the trustees are subject to the DST of P15.00[1] pursuant to Section 188 of the same Code.[2] (BIR Ruling No. 080-02 dated April 29, 2002)

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,

CAESAR R. DULAY
Commissioner of Internal Revenue
052157

K1-FR-18-1221

[1] Old DST rate was used since the Deeds of Trust were executed prior to the effectivity of Republic Act (RA) No. 10963.