June 13, 2018

BIR RULING NO. 1011-18

Secs. 24 (B) (2); 73 (C), National Internal Revenue Code of 1997, as amended; BIR Ruling No. 190-1999

M.C. Holdings Corporation
17, Edades St., San Lorenzo Village,
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 26, 2016 which was received by this Office on March 01, 2016 stating that M.C. HOLDINGS CORPORATION, with principal place of business at 17, Edades St., San Lorenzo Village, Makati City, is a domestic corporation incorporated and registered to do business in the Philippines on September 6, 1985; that it has an authorized capital stock of _____ Pesos (P_____) divided into Seventy Thousand (70,000) common shares with a par value of _____ Pesos (P_____) per share; that Seven Thousand Seven Hundred Eighty Four (7,784) of the authorized shares remain as treasury shares as of December 31, 2014; that it has a total of _____ (_____) unrestricted retained earnings as of December 31, 2014; that the Board of Directors proposes to declare property dividend in the form of real property, a condominium unit located at Katrina Office Building, #33 Shaw Boulevard, Pasig City, owned by M.C. HOLDINGS CORPORATION and having a book value of _____ (P_____) as of December 21, 2014; and that based on the foregoing representations, you now seek confirmation of your opinion that:

1. The property dividends to be declared by M.C. HOLDINGS CORPORATION, which is a condominium unit, can be recorded at its respective book value in the books of M.C. HOLDINGS CORPORATION and the stockholders can record such dividends at M.C. HOLDINGS CORPORATION'S book value as well;

2. In case of subsequent sale or disposition of the said real estate property received through property dividend by the stockholders, the property's book value at the time of the dividend distribution shall be the basis of

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taxation; and

3. The Deed of Conveyance to be executed between M.C. HOLDINGS CORPORATION and the stockholders, since not being a sale, will not be subjected to documentary stamp taxes (DST) under Section 196 of the National Internal Revenue Code of 1997, as amended, nor capital gains tax (CGT) or expanded withholding tax (EWT) on the transfer of real estate properties, but instead be covered by Section 188 of the National Internal Revenue Code of 1997, as amended.

In reply, please be informed as follows:

1. Property dividends shall be recorded at book value in the books of both M.C. HOLDINGS CORPORATION and the recipient corporate stockholder/s.

2. The subsequent sale or other disposition of the property received as dividends by the stockholders of M.C. HOLDINGS CORPORATION shall be subject to CGT based on the difference between the book value at the time of receipt of the property dividend and the fair market value (FMV) at the time of disposition.

3. The Deed of Conveyance to be executed between M.C. HOLDINGS CORPORATION and the stockholders will not be subject to CGT on the transfer of the real estate property. However, it shall be subject to DST under Section 196 of the National Internal Revenue Code of 1997, as amended, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6 (E) of the National Internal Revenue Code of 1997, as amended, whichever is higher. The DST therein shall be filed within five (5) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed, pursuant to Section 200 (B) of the National Internal Revenue Code of 1997, as amended.

Also, the recipient individual stockholders of M.C. HOLDINGS CORPORATION of the property dividend, which is a condominium unit, shall be subject to:

a. Ten percent (10%) final tax, in case of individual stockholders, pursuant to Section 24 (B) (2) of the National Internal Revenue Code of 1997, as amended; or

b. Twenty percent (20%), in case of non-resident alien stockholders, pursuant to Section 25 (A) (2) of the National Internal Revenue Code of 1997, as amended.

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Moreover, Section 106 (B) (2) (a) of the National Internal Revenue Code of 1997, as amended states that:

"Sec. 106. Value-Added Tax on Sale of Goods or Properties. —

xxx xxx xxx

(B) Transactions Deemed Sale. — The following transactions shall be deemed sale:

xxx xxx xxx

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the VAT-registered persons;"

In relation thereto, SECTION 4.106-7 (a) (2) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007 provides that:

"SECTION 4.106-7. Transactions Deemed Sale. —

(a) The following transactions shall be "deemed sale" pursuant to Sec. 106 (B) of the Tax Code:

xxx xxx xxx

(2) Distribution or transfer to:

i. Shareholders or investors share in the profits of VAT-registered person;

Property dividends which constitute stocks in trade or properties primarily held for sale or lease declared out of retained earnings on or after January 1, 1996 and distributed by the company to its shareholders shall be subject to VAT based on the zonal value or fair market value at the time of distribution, whichever is applicable.

xxx xxx xxx"

Thus, property dividends which constitute stocks in trade or properties primarily held for sale or lease, which shall be distributed by M.C. HOLDINGS CORPORATION to its stockholders and declared out of its retained earnings shall be subject to VAT based on the FMV or zonal valuation whichever is higher, at the time of distribution. *(BIR Ruling No. 190-99 dated November 29, 1999)*

The book value of the real property dividend (condominium unit) must be annotated at the back of the Condominium Certificate of Title (CCT) of the real property which shall serve as the basis of the computation of the tax upon its subsequent disposition.

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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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