July 27, 2018

BIR RULING NO. 1114-18

Secs. 27 (D) (5), 196; BIR Ruling No. 383-17; BIR Ruling No. 445-16; BIR Ruling No. 051-15

Cebu Central Realty Corporation
3rd Floor, Elizabeth Mall
Cor. Leon Kilat St. & N. Bacalso Avenue
Cebu City

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 1, 2018 requesting for confirmation of your opinion that the Deed of Transfer and Assignment executed between Cebu Central Realty Corporation ("CCRC"), as Transferor-Trustee, and University of Cebu at Mactan World, Inc. ("UCMW"), as Transferee-Trustor, is not subject to capital gains tax (CGT), creditable withholding tax (CWT), value-added tax (VAT), donor's tax and documentary stamp tax (DST).

Background:

For some time, BBB, the _____ of the University of Cebu, has been in the process of brainstorming with several prospective investors to organize a new and separate educational entity to cater to the expected needs for more skilled human resources which are expected from the exponential growth of business in the area. The rapid establishment of business in the Island of Mactan with the construction of the Cebu-Cordova bridge will definitely further increase the student population of Mactan, which is in fact, the challenge which the University of Cebu has seriously considered.

Sometime in October 2016, CCC, et al., and DDD ("Sellers"), as co-owners of six (6) parcels of land (the "Subject Properties"), with an aggregate area of Nine Thousand Six Hundred Sixty-Three (9,663) square meters located at Poblacion, Lapu-Lapu City, has offered to sell the Subject Properties at a very attractive and special price of _____ (P_____) Pesos, provided that the sale will be done at the earliest possible time. The properties offered for sale, are the following:

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TCT No.	Lot No.	Area in Sq. Meters	Owners
19694	179-D-2	168	CCC-DDD, et al.
110-2013001727	179-D-3-A	680	
110-2013001728	179-D-3-A-2	2,922	
19693	179-D-4	200	
20013	179-D-5	495	
110-2011002287	185-P	5,198	
TOTAL		**9,663**	

With the offer, the issue of where to locate the campus of the corporation, which is still in the process of incorporation, *i.e.*, UCMW, was resolved. It was considered timely. Thus, UCMW, through CCRC, has decided to take the opportunity of acquiring the Subject Properties (via an execution of six (6) Deeds of Absolute Sale all dated November 7, 2016) because of its area, which is ideal for school campus, strategic location and relatively reasonable price, subject to the following considerations:

1. A new educational corporation, which is in the process of incorporation (UCMW), will subsequently acquire the property acting as Trustor; and

2. As soon as the corporation is duly organized and registered with the Securities and Exchange Commission (SEC), the property will be transferred to UCMW, since it now possesses the legal personality to enter into a contract.

Currently, the majority stockholdings of CCRC are owned by the EEE Family and upon incorporation of UCMW, it will be likewise owned by the same family. As such, on November 3, 2016, CCRC (as Trustee) and BBB, as the representative of UCMW (as Trustor), while in the process of incorporation, entered into a Trust Agreement, whereby they agreed that:

1. The Trustee, in behalf of the Trustor, shall purchase from the CCC/DDD the Subject Properties, as above-mentioned;

2. The Trustor shall advance the amount required to purchase said lot at a price of P_____ and for which the Trustee shall acknowledge receipt thereof as such, and that is, the Trustee will receive the amount for and on behalf of the Trustor as full consideration of the price of the lots;

3. As soon as the Trustor is duly incorporated with the SEC, the Trustee shall execute the necessary Deed of Transfer and Assignment whereby

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the latter shall assign, cede, transfer and convey the full, absolute and exclusive ownership to the former the Subject Properties without consideration under and by virtue of the Trust Agreement; and

4. All the expenses which may be incurred by the Trustee shall be for the exclusive account of the Trustor.

With the Trust Agreement duly executed, the purchase of the Subject Properties was acquired and the corresponding taxes due thereon were all paid on November 17, 2016 and the respective eCARs were all issued by the Revenue District Office (RDO) No. 80, Mandaue City.

Finally, on March 16, 2018, the Deed of Transfer and Assignment was executed between CCRC, as the Transferor-Trustee, and UCMW, as the Transferee-Trustor, whereby CCRC transferred and conveyed the absolute title over the Subject Properties in favor of UCMW, as agreed upon in the Trust Agreement previously executed.

In support of your request, you submitted the following documents:

1. Copy of Trust Agreement dated November 3, 2016;

2. Copy of Deed of Transfer and Assignment dated March 16, 2018;

3. Copy of Acknowledgment Receipt issued by CCRC amounting to P_____;

4. Copies of e-CARs;

5. Copy of the Certificate of Registration issued by the SEC to UCMW.

In reply thereto, please be informed that your opinion is hereby confirmed as follows:

The transfer/conveyance of titles over the Subject Properties by CCRC, as Trustee, in favor of UCMW, as Trustor, who is the beneficial owner thereof is not subject to capital gains tax imposed under Sec. 27 (D) (5) of the Tax Code of 1997, as amended, nor to the creditable withholding tax (CWT) prescribed in Revenue Regulations (RR) No. 2-98, as amended, considering that the conveyance merely acknowledges, confirms and consolidates the legal title and beneficial ownership over the properties in the name of UCMW, the Trustor. *(BIR Ruling No. 383-17 dated August 22, 2017)*

Furthermore, in BIR Ruling No. 332-12 dated May 14, 2012, involving a BDO Trust Property, citing BIR Ruling No. 031-99 dated March 19, 1999, this Office has already ruled that:

"x x x 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

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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."

The transfer/conveyance of the Subject Properties to the Trustor is not likewise subject to the 12% VAT because the said property is not held primarily for sale to customers or for lease in the ordinary course of trade or business. *(BIR Ruling No. 445-16 dated December 19, 2016)*

The transfer/conveyance of the Subject Properties to the Trustor without any monetary consideration is not subject to gift tax imposed under Sec. 98 of the 1997 Tax Code, as amended, since there is no donative intent on the part of the trustee. *(BIR Ruling No. 051-2015 dated February 24, 2015)*

The Deed of Transfer and Assignment executed to terminate the trust relationship between the trust entity and the Trustor and the consolidation of the legal title and beneficial ownership over the subject property is a conveyance without monetary consideration, and as such is not subject to the documentary stamp tax imposed under Sec. 196 of the same Tax Code, as amended. However, the notarial acknowledgment to such deed is subject to the documentary stamp tax of P15.00 [1] under Sec. 188 of the 1997 Tax Code. *(BIR Ruling No. 329-2012 dated May 11, 2012)*

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 as null and void.

Very truly yours,

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

Footnotes

1. The old DST rate of P15.00 is used since the transaction took place prior to the effectivity of Republic Act No. 10963.

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