August 28, 2018

BIR RULING NO. 1133-18

Secs. 39 (A) (2) & (3); 73; 196 of NIRC of 1997, as amended; RR No. 6-08; RR 26; BIR Ruling No. 028-02; BIR Ruling No. 092-99

Veratrade, Inc.
c/o AAA
No. 117, Valenzuela St.
U.P. Campus, Diliman
Quezon City

Sir :

This refers to your letter dated February 20, 2014, which was forwarded by the Regional Director of Revenue Region No. 8, Makati City, requesting for confirmation of your opinion that the transfer of property by Veratrade, Inc. to its stockholders is not subject to income tax, capital gains tax, and withholding tax since Veratrade, Inc. has already lost its juridical personality as a consequence of the revocation of its Certificate of Registration by the Securities and Exchange Commission (SEC) in 2003 and became final and executory on December 31, 2013.

It is represented that Veratrade, Inc. is a domestic corporation primarily engaged in general mercantile and commercial business of importing and exporting, buying, acquiring, holding, selling or otherwise disposing of and dealing in any goods, wares, merchandises and commodities of all kinds, and products, natural or artificial of the Philippines or other countries, which are or may become articles of commerce; that on August 11, 2003, the SEC revoked the Certificate of Registration of Veratrade, Inc. and such revocation became final and executory on December 31, 2013; that it is still in the process of liquidation; [1] that it has no existing liabilities to liquidate with any person or entity as of December 31, 2013; [2] that its only asset registered in its name is a condominium unit acquired in 1981 covered by Condominium Certificate of Title (CCT) No. CT-2477 located at First Capital Condominium Corporation at No. 119 Rada St., Legaspi Village, Makati City; that as a consequence of the aforesaid revocation, the Board of Trustees of Veratrade, Inc. in its Meeting held on February 12, 2014 resolved that AAA be authorized to execute a Declaration of Transfer to the stockholders the ownership of the condominium unit covered by CCT No. CT-2477; and that as of date, the remaining stockholders of Veratrade, Inc., with no unpaid subscriptions with their

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corresponding percentage of ownership, are as follows:

Name of Stockholders	% of Ownership
AAA	50%
BBB	30%
CCC	15%
DDD [3]	2.5%
EEE	2.5%

We reply, as follows:

(1) Pursuant to Section 8 of Revenue Regulations (RR) No. 06-08 dated April 22, 2008, individual shareholders shall recognize capital gains upon surrender of shares computed as excess of the cash and fair market value of property received over the cost of the investment in shares and that such gain shall be subject to the regular income tax rates, to wit:

> *"SECTION 8. Taxation of Surrender of Shares by the Investor Upon Dissolution of the Corporation and Liquidation of Assets and Liabilities of Said Corporation. — Upon surrender by the investor of the shares in exchange for cash and property distributed by the issuing corporation upon its dissolution and liquidation of all assets and liabilities, the investor shall recognize either capital gain or capital loss upon such surrender of shares computed by comparing the cash and fair market value of property received against the cost of the investment in shares. The difference between the sum of the cash and the fair market value of property received and the cost of the investment in shares shall represent the capital gain or capital loss from the investment, whichever is applicable. If the investor is an individual, the rule on holding period shall apply and the percentage of taxable capital gain or deductible capital loss shall depend on the number of months or years the shares are held by the investor. Section 39 of the Tax Code, as amended, shall herein apply in all possible situations.*
>
> *The capital gain or loss derived therefrom shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations."*

Based on the above provision of RR 06-08, if the fair market value of the condominium unit received by the stockholders of Veratrade, Inc. exceeds their respective cost of investment in shares, they shall recognize a gain subject to the regular (graduated) income tax rates. Conversely, if the fair market value of the condominium unit received as liquidating dividends does not exceed the cost of their investment, no taxable gain will be recognized by the stockholders. *[Section 256, RR No. 2, Income Tax Regulations] (BIR Ruling No. 028-2002 dated July 22, 2002)*

(2) No tax shall be imposed on the liquidating corporation's receipt of the shares

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surrendered by the shareholders because the transaction is not treated as a sale.

In BIR Ruling No. 092-99 dated July 8, 1999 this Office ruled, *viz.*:

> *"The transfer by the liquidating corporation of its remaining assets to its stockholders is not considered as a sale of these assets. Thus, a liquidating corporation does not realize gain or loss in partial or complete liquidation. [W.P. Fax & Sons, Inc., Petitioner v. Commissioner of Internal Revenue, Respondent, 15 BTA 115; Jordan Petroleum Company, 13 AFTR 2d 1692 (227 F. Supp. 174); J.T.S. Brown & Son Company v. Commissioner of Internal Revenue, 10 TC 840] Hence, the transfer by Fundamental Development Corporation of its assets, i.e., one (1) parcel of land, to its controlling stockholders by way of liquidating dividends is not subject to the expanded creditable withholding tax imposed under Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, as last amended by Revenue Regulations No. 2-98 (BIR Ruling No. 059-90 dated April 17, 1990), and consequently, the same is not subject to the corporate income tax."*

Furthermore, in *Victoria Fernando vs. Sps. Lim (G.R. No. 176282, August 22, 2008)*, the Supreme Court held that no tax shall be imposed on the liquidating corporation's receipt of the shares surrendered by the shareholders because the transaction is not treated as a sale. In the said case, the Court had the opportunity to discuss the nature of a liquidating dividend and its tax consequence, to wit:

> *"The share of each stockholder in the remaining assets of the corporation upon liquidation, after the payment of all corporate debts and liabilities, is what is known as liquidating dividend. In its interpretation of recent tax laws, the Bureau of Internal Revenue viewed the distribution of liquidating dividends not as a sale of asset by the liquidating corporation to its stockholder but as a sale of shares by the stockholder to the corporation or the surrender of the stockholder's interest in the corporation, in place of which said stockholder receives property or money from the corporation about to be dissolved. Thus, on the part of the stockholder, any gain or loss is subject to tax, while* ***on the part of the liquidating corporation, no tax is imposed on its receipt of the shares surrendered by the stockholder or transfer of assets to said stockholder because said transaction is not treated as a sale****."*
> (Citations omitted and emphasis supplied)

Considering the foregoing, no tax shall be imposed on Veratrade, Inc. on its receipt of shares surrendered by the stockholders or the transfer of assets to said stockholders because said transaction is not treated as a sale. Consequently, Veratrade, Inc. shall not be liable for income tax on the transfer of the condominium unit to its shareholders by way of liquidating dividends. *(BIR Ruling Nos. 092-99 dated July 8, 1999 citing BIR Ruling No. 059-90 dated April 17, 1990; and 028-2002 dated July 22, 2002).*

(3) The documentary stamp tax (DST) imposed under Section 196 of the National Internal Revenue Code of 1997, as amended, shall not apply in transfers of real property as liquidating dividends to its remaining stockholders. Section 196 of the

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National Internal Revenue Code of 1997, as amended, provides:

> *"**SEC. 196. Stamp Tax on Deeds of Sale and Conveyances of Real Property**. — On all conveyance, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:*
>
> *(a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed one thousand pesos, Fifteen pesos (P15.00).*
>
> *(b) For each additional one thousand pesos, or fractional part thereof in excess of one thousand pesos of such consideration or value, Fifteen pesos (P15.00)."*

However, the above provision does not apply to transfers of property as return of capital. RR No. 26 further provides that conveyance of real property by a corporation without consideration to the owner of its capital stock is not subject to DST. Section 189 of RR No. 26 provides:

> *"Section 189. Conveyance by corporation to owner of all the capital. — A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax."*

In BIR Ruling No. 028-2002 dated July 22, 2002, this Office ruled that:

> *"Since the stockholders of Rose Packing Company, Inc. will receive upon its liquidation its assets consisting of the aforementioned land as liquidating dividends, they will thereby realize capital gain or loss. The gain, if any, derived by the individual stockholders consisting of the difference between the fair market value of the liquidating dividends and the adjusted cost to the stockholders of their respective shareholdings in the said corporation [Sec. 256, Income Tax Regulations] shall be subject to income tax at the rates prescribed under then Section 21 (a) of the Tax Code, as amended by Executive Order No. 37. Moreover, pursuant to then Section 33(B) of the Tax Code, as amended, only 50% of the aforementioned capital gain is reportable for income tax purposes if the shares were held by the individual stockholders for more than twelve months and 100% of the capital gains if the shares were held for less than twelve months. Finally, this Office has ruled that the conveyance of real property in the form of liquidating dividends to the stockholders is not subject to documentary stamp tax under Section 196 of the Tax Code."* (Underscoring ours)

Considering the foregoing, Section 196 of the National Internal Revenue Code of 1997, as amended, shall not apply to the distribution of assets as liquidating dividends. Therefore, the distribution of the remaining asset (condominium unit) of Veratrade, Inc. to its shareholders shall not be subject to DST.

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It is, however, understood that this Ruling is never intended and shall not be construed as giving authority to the concerned Register of Deeds to effect transfer of the condominium unit in the name of the stockholders of Veratrade, Inc. without the necessary certificate of authority to register 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 Certificate Authorizing Registration (CAR).

Please take note that before the issuance of the CAR on the transfer of the condominium unit by Veratrade, Inc. to its stockholders, Veratrade, Inc. should first apply for the closure of its business due to cessation/termination before RDO No. 47, following the procedures and guidelines stated under Revenue Regulations (RR) No. 11-2008.

This ruling is issued based on the facts as represented. However, if upon investigation it shall be disclosed that the facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

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

Footnotes

1. Based on the General Information Sheet prepared by Veratrade, Inc. dated May 31, 2013.
2. Based on the submitted Answers to Queries with attachments.
3. Submitted an Affidavit of One and the Same Person dated September 27, 2017.

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