October 22, 2018

BIR RULING NO. 1281-18

Sec. 24 (D) (1) NIRC; BIR Ruling No. 633-2012

Singco and Cagara Law Offices
Rm. 2, Mezzanine Flr., Anecita Bldg.
Osmeña Blvd., Cebu City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 15, 2013, endorsed to this Office by Revenue Region No. 13, Cebu City, requesting exemption from capital gains tax (CGT) and documentary stamp tax (DST) on the reconveyance of two (2) parcels of land executed by BBB in favor of your client, CCC, pursuant to a court-approved compromise agreement.

It is represented that CCC, for reasons of expediency and being out of the country most of the time, registered her two (2) * parcels of land, covered by Transfer Certificate of Title (TCT) Nos. T-62483 and T-138048, in the name of her mother, BBB; that on one occasion, her mother tried to sell the properties to whomsoever was interested to buy the same; that upon knowing this, CCC thwarted the impending sale of said properties and filed a case against her mother; that they subsequently executed a compromise agreement agreeing, among others, on the reconveyance of the subject properties in favor of CCC; and that said compromise agreement was duly approved by the Municipal Trial Court of Barili, 7th Judicial Region, Barili, Cebu, in its Decision dated April 10, 2013 which became final and executory on June 4, 2013.

In reply, please be informed that Section 24 (D) (1) of the Tax Code of 1997, as amended, provides:

> "(D) Capital Gains from Sale of Real Property. —
>
> (1) *In General.* — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines,

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> classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts: *Provided*, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of the taxpayer;"

The above-cited provision, however, does not apply in the instant case. There is no sale, barter or exchange of the real properties as contemplated under the above provision since the transfer of the real properties in this case was made in accordance with a court-approved compromise agreement whereby BBB acknowledged the real and true ownership of CCC over the said properties. Thus, the reconveyance of the real properties by BBB in favor of CCC, which was made without any monetary consideration, is not subject to CGT imposed under Section 24 (D) (1) of the 1997 Tax Code, as amended. This is merely a return of the real properties to their true and real owner, CCC.

Moreover, the reconveyance of the subject real properties in favor of CCC, made in accordance with the court-approved compromise agreement, is not subject to DST pursuant to Section 185 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp Regulations, which provides that the conveyance of a real property without monetary consideration is not subject to the payment of DST. The notarial certification, is however, subject to the DST of fifteen pesos (P15.00) imposed under Section 188 of the same Code. *(BIR Ruling No. 633-2012 dated November 26, 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 null and void.

Very truly yours,

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

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