October 22, 2018

BIR RULING NO. 1286-18

Sections 27 (A) & (D) (5), 56 (A), 106,
188 & 196, 1997 NIRC

BPI Asset Management and Trust Corp.
17/F, BPI Building
Ayala Avenue corner Paseo de Roxas
Makati City

Attention: *AAA/BBB*
_____/_____

Gentlemen :

This refers to your letter dated February 19, 2018 regarding the spin-off of the entire trust business operations of Bank of the Philippine Islands (BPI) under its **Asset Management Group (BPI-AMTG)** which resulted in the creation of **BPI Asset Management Corporation (BPI AMTC)** as a stand-alone trust corporation and a wholly-owned subsidiary of BPI.

As represented, pursuant to Circular No. 884, Series of 2015 *(Guidelines on the Establishment and Operation of Trust Corporations)* of the Bangko Sentral ng Pilipinas (BSP) and the approval of the Monetary Board in its Resolution No. 1349 dated July 28, 2016, the trust entity BPI-AMTG as a trust department of BPI was spun-off into BPI AMTC upon the latter's incorporation on October 6, 2016. BPI AMTC commenced its operations on February 1, 2017 and as a necessary consequence of this corporate reorganization, BPI-AMTG's trust and investment management functions and portfolios including but not limited to the management of the Unit Investment Trust Funds (UITFs) and all of its licenses, registrations, certifications, trust and investment management agreements and other contracts as trustee, manager, administration, executor, security custodian and other roles requiring the exercise of its fiduciary functions (collectively and inclusively, the "Funds, Accounts and Assets Held in Trust") were transferred to and assumed by BPI AMTC, but in any case without any transfer or conveyance of the trustor's respective real and beneficial ownership over the Funds, Accounts and Assets Held in Trust.

As further represented, excluded from the subject transfer were the proprietary assets of BPI-AMTG and the beneficial and equitable ownership over the Funds, Accounts and Assets Held in Trust remained with the trustors and at no time did these

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trustors withdraw the assets or revoke the authority of BPI-AMTG as trustee and BPI AMTC as successor trustee to continue to function as such. Significantly, the sole purpose of BPI-AMTG's transfer of the aforementioned trust portfolios and assets held in trust, was to implement the organizational spin-off, or conversely the "carve-out" of BPI's trust operations to effectively allow BPI AMTC as a trust entity to exercise trust, fiduciary business and investment management activities, and act as trustee or administer any trust or hold property in trust or on deposit for the use and benefit of others, and act as financial consultant, investment adviser or portfolio manager. The transfer of BPI's trust operations was not effected as, or intended to be, a sale, barter, exchange or any other disposition of property separately and independently from the bank. It was implemented as a legitimate business decision consistent with the thrust of the BSP and in accordance with BSP Circular No. 884 and no action on the accounts of the affected entities were made which would otherwise result in avoiding any tax liability arising from the aforesaid reorganization.

Thus, you now request for confirmation that (1) there is no tax consequence as a result of the transfer by BPI-AMTG to BPI AMTC of all Funds, Accounts and Assets Held in Trust; (2) there is no need to secure a Certificate Authorizing Registration (CAR) for the said transfer or spin-off inasmuch as the corporate action merely created a change in the person of the trustee (from BPI-AMTG to BPI AMTC); and (3) the change in person of the trustee on all Funds, Accounts and Assets Held in Trust by the transfer is not considered a sale, barter, exchange or other disposition of property subject to any tax of any nature that may arise out of such transfer, including but not limited to income tax, capital gains tax, gift tax, value added tax or documentary stamp tax.

The reply is discussed as follows:

1. Income Tax

It is elementary that for an income *to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation.* [1]

The transfer of BPI-AMTG's trust and investment management functions and portfolios and all of its licenses, registrations, certifications, trust and investment management agreements and other contracts as trustee, manager, administration, executor, security custodian and other roles requiring the exercise of its fiduciary functions (collectively and inclusively, the "Funds, Accounts and Assets Held in Trust") is not a taxable event subject to income tax since it is a mere transfer of functions and responsibilities without any monetary consideration. Absent any gain realized from the transaction, no income tax can be imposed pursuant to Section 27 (A) of the 1997 Tax Code, as amended.

Moreover, although these Funds, Accounts and Assets Held in Trust may include real properties, there is no sale, exchange or disposition of property to speak of since there is no change in beneficial and equitable ownership. There is a mere change of

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trustee in compliance with BSP Circular No. 884.

2. Capital Gains Tax (CGT)

For the same reason, the transfer of Funds, Accounts and Assets Held in Trust by BPI-AMTG to BPI AMTC is not subject to CGT imposed by Section 27 (D) (5) of the 1997 Tax Code, as amended. Although these Funds, Accounts and Assets Held in Trust include real properties, these are not capital assets owned by BPI-AMTG but merely assets held in trust. In addition, there is no sale, exchange or disposition of real property involved in the transaction since there is no change in beneficial and equitable ownership.

3. Value-Added Tax (VAT)

Since there is no sale, exchange or disposition of goods or properties involved in the transaction, this Office is of the opinion that the same is likewise not subject to VAT imposed by Section 106 of the 1997 Tax Code, as amended.

4. Documentary Stamp Tax (DST)

The transfer of Funds, Accounts and Assets Held in Trust by BPI-AMTG in favor of BPI AMTC, although it includes real properties, is not subject to DST imposed on Deeds of Sale and Conveyances of Real Property by Section 196 of 1997 Tax Code, as amended, since there is no sale, exchange or disposition of property involved in the transaction. The notarial acknowledgement, however, on the Transfer Agreement is subject to DST of P15.00 [2] imposed by Section 188 of the same Code.

Notwithstanding the above discussion, the issuance of Certificate Authorizing Registration (CAR) is necessary to effect the change of trustee in the Transfer Certificate of Titles (TCT) of real properties comprising the Funds, Accounts and Assets Held in Trust transferred by BPI-AMTG to BPI AMTC. In this regard, this Ruling shall be presented to the Revenue District Office (RDO) concerned in order for the latter to issue the CAR as prescribed in Revenue Regulations (RR) No. 24-2002.

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,

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

Footnotes

1. *BIR vs. CA,* G.R. No. 197590, November 14, 2014.
2. The old DST rate of P15.00 is used since the donation took place prior to the effectivity

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of R.A. No. 10963.