November 15, 2018

BIR RULING NO. 1330-18

BIR Ruling No. DA-508-03; BIR Ruling No. 052-90; BIR Ruling No. 074-98; BIR Ruling No. 390-87

AAA

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Gentlemen :

This refers to your letter dated October 10, 2016 requesting in behalf of your clients, Trusteeship, Inc. and BBB, for a ruling relative to the tax consequences of the sale of house and lot claimed as a capital asset which was the subject of a Contract to Sell executed by your clients on December 31, 1985.

Background:

On December 31, 1985, Trusteeship, Inc., a close corporation duly organized under Philippine laws, entered into a Contract to Sell with BBB involving a house and lot located at Mabolo St., Dasmariñas Village, Makati City, covered by Transfer Certificate of Title (TCT) No. 3593308 and Tax Declaration No. B-000-00000 *(now Tax Declaration No. F000000000)* and Tax Declaration No. B-000-00000 *(now Tax Declaration No. F00000000)*.

Under the Contract to Sell, it was stipulated by the parties that the total purchase price for the house and lot shall be _____ Pesos (PhP_____) and an advance payment of _____ (PhP_____) shall be paid simultaneously upon the execution of the Contract to Sell while the remaining balance of _____ (PhP_____) shall be paid on or before December 31, 1987. However, the same contract was not notarized.

Subsequently, BBB was able to fully pay the balance on December 18, 1987 as evidenced by Official Receipt Nos. 31054 and 31093. Notwithstanding the full payment of the balance, the parties, however, did not execute a Deed of Absolute Sale to facilitate the transfer of ownership of the house and lot. Consequently, the property remained registered under the name of Trusteeship, Inc.

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More than two decades after the full payment of the purchase price, the parties now desire to transfer the said property. Hence, this request for ruling as to the following:

1. Whether the difference between the purchase price that they stipulated in their Contract to Sell dated December 31, 1985 and the fair market value/zonal value of the property after 1985 when the Deed of Absolute Sale of the property will be executed by the seller and buyer will not be subjected to any other tax and whether the current rates for the documentary stamps prescribed under Section 196 of the 1997 National Internal Revenue Code shall apply based on the stipulated agreed purchase price of the property in the amount of Php_____;

2. Whether the Contract to Buy and Sell of the above-mentioned house and lot is subject to the coverage of the provision of Section 24 (a) of the 1977 Tax Code as amended by Executive Order No. 37 that was promulgated on July 31, 1986;

3. Whether the Contract to Buy and Sell of the above-mentioned property is subject to the coverage of the provision of Revenue Regulations No. 1-90 dated January 16, 1990;

4. Whether the Contract to Buy and Sell of the above-mentioned property is subject to the Value-Added Tax Law pursuant to Executive Order No. 273;

5. Whether the Contract to Buy and to Sell the above-mentioned property which is not used in business by the seller, Trusteeship, Inc. and held as capital asset is covered by Revenue Memorandum Circular No. 1-98, par. (2) pursuant to Section 27 (D) (5) of the National Internal Revenue Code as amended by R.A. No. 8424 which provides that "A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of this Code, whichever is higher, of such lands and/or buildings"; and

6. Whether the seller Trusteeship, Inc. is liable to pay penalties for late filing.

In reply, please be informed that it is a well-settled rule that the law or BIR issuance at the time of transaction should be applied. [1]

Article 1315 of the New Civil Code provides that contracts are perfected by mere

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consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all consequences which according to their nature may be in keeping with good faith, usage and law. Moreover, Article 1475 of the Civil Code provides when contract of sale is perfected, to wit:

> *"Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price."*

Considering that as of December 31, 1985, Trusteeship, Inc. has agreed to sell the subject property to BBB for the amount of PhP_____ and an advance payment of PhP_____ was in fact paid simultaneously upon the execution of the Contract to Sell while the remaining balance of PhP_____ was paid in two installments on October 9, 1987 and December 9, 1987, the parties are therefore bound by the agreed purchase price as of December 31, 1985.

Since the property is claimed to be a capital asset, the gain or income derived by the seller from the aforesaid sale is subject to capital gains tax prescribed by Section 21 (e) of Presidential Decree (P.D.) No. 1158, as amended by Executive Order (E.O.) No. 37 at the rate of five percent (5%) based on the gross selling price or fair market value prevailing **at the time of sale**. It should be noted that Art. 1475 of the Civil Code provides that a contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

Accordingly, the difference between the purchase price agreed upon by the parties in 1985 and the fair market value of the property in 1987 when the purchase price was paid in full is not subject to donor's tax. [2]

It is represented that Trusteeship, Inc. has previously declared for income tax purposes in its regular income tax return the gains it derived from the sale of the property subject of this ruling. Since the transaction transpired in 1985 and the total contract price was ascertained to have been fully paid in 1987, it bears to consider that the seller should have duly paid the corresponding taxes. **However, it is still incumbent upon Trusteeship, Inc. to show convincing proof that the company indeed paid the corresponding taxes from the sale subject of this ruling in its returns for the years 1985 and 1987**.

Applying Section 163, Regulations No. 26, or the Revised Documentary Stamp Tax Regulations, the deed of sale will become subject to the DST when the title to the property is vested on the vendee, *i.e.*, upon *full* payment of the consideration, as stated in the Contract to Sell executed by the parties in 1985, upon payment of the last installments. [3] The DST is based on the consideration or value received or contracted to be paid for such realty, after making proper allowance for any encumbrance:

(1) more than P200 but not more than P2,000 50 centavos

(2)	for each additional P1,000, or fractional part thereof	50 centavos

In answer to Query No. 3, please be informed that under par. 4 of RMC 7-90, clarifying RR 12-89 and 1-90 prescribing the withholding of creditable income tax on the sale, exchange, or transfer of real property, the obligation of the payor to deduct and withhold arises at the time the consideration is paid or payable. However, where the consideration or part thereof is payable on installments, no withholding of tax is required to be made on the installment payments where the buyer is an individual not engaged in any trade or business. RR 1-90, which constitutes individual buyers not engaged in trade or business as withholding agents, became effective on February 1, 1990. In the instant case, the transaction is not covered by RR 1-90 since the last payment was made on December 9, 1987 or prior to the effectivity of RR 1-90 on February 1, 1990. The issuance applicable instead is RR No. 06-85 dated May 2, 1985. As clarified in RMC 80-89, the date of notarization appearing on the Deed of Sale shall be considered *prima facie* the date of consummation of the contract of sale. However, the Revenue District Officer may issue the Certificate Authorizing Registration (CAR) without the payment of the CWT where the taxpayer can clearly prove that there was no ante-dating and the late submission of the Deed of Sale was due to a reasonable and justifiable cause ex. the Contract to Sell shows the last installment to have been paid on or before November 1989, as in this case.

With regard to the query as to whether the Contract to Buy and to Sell of the abovementioned property is subject to the Value-Added Tax Law pursuant to Executive Order No. 273, we rule in the negative. The same law took effective January 1, 1988, hence, not applicable to previous transactions before its effectivity.

In view of the foregoing, while Trusteeship, Inc. is not liable to pay value added tax nor withholding tax, it is liable to pay the capital gains tax at the rate of five percent (5%) based on the gross selling price or fair market value prevailing **at the time** of sale and the corresponding documentary stamp tax due on the transaction based on the gross selling price or actual consideration paid by the buyer at the applicable rates prescribed under Regulations No. 26, or the Revised Documentary Stamp Tax Regulations plus the corresponding penalties and other charges thereto from the date of execution of the contract to sell.

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

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Footnotes

1. BIR Ruling No. DA-508-03.
2. *Supra*, citing BIR Ruling No. 180-85 dated October 9, 1985.
3. BIR Ruling No. 390 dated December 7, 1987.

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