November 19, 2018

BIR RULING NO. 1387-18

Sec. 2 (r) of Revenue Bulletin No. 01-03;
BIR Ruling No. 201-15

Symecs Law
3109 One Corporate Center,
Julia Vargas cor. Meralco Ave.,
Ortigas, Pasig City

Attention: *AAA*

BBB

CCC

Gentlemen :

This refers to your letter dated November 28, 2016, requesting on behalf of your client, **Central Luzon Doctors' Hospital, Inc. ("CLDH" for brevity)**; for a ruling on the validity of the capital gains tax (CGT) assessment on the property dividend distribution of CLDH in favor of various stockholders.

Background:

CLDH holds shares of stock in Central Luzon Doctor's Hospital-Educational Institution ("CLDH-EI" for brevity) for investment purposes. On August 05, 2013, CLDH's Board of Directors approved the declaration and distribution of property dividends in the form of shares of stock in CLDH-EI to all of its stockholders of record. The total number of shares to be distributed were One Million Five Hundred One Thousand Nine Hundred Ninety-Five (1,501,995) as per Statements of Changes in Stockholders' Equity for the year 2013 of CLDH-EI. Pursuant to Section 24 (B) (2) of the National Internal Revenue Code of 1997, as amended, CLDH withheld and paid final tax on the property dividend declaration amounting to _____ (Php_____).

To move forward with the distribution of property dividends, CLDH applied for and was issued a Certificate of Filing the Notice of Property Dividend Declaration by the Securities and Exchange Commission (SEC). CLDH then executed a Deed of Assignment in favor of the various stockholders evidencing the property dividend distribution.

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Despite having paid the final withholding tax on the said dividend declaration, Revenue District Office (RDO) No. 17-A, Tarlac City, on December 12, 2014, assessed CLDH for CGT on property dividend declaration in the amount of _____ (Php_____). CLDH protested the assessment through a letter dated December 23, 2014 to the Regional Director of Revenue Region (RR) No. 4, San Fernando, Pampanga attaching similar BIR Rulings and arguing that since the transaction is not a sale, it should only be subject to ten percent (10%) final tax on dividends and documentary stamp tax (DST), which were already paid by CLDH. On May 15, 2015, CLDH received a reply from RDO No. 17-A rejecting the argument of CLDH and insisted that CGT is likewise due from said property dividend declaration and that CLDH cannot invoke the rulings previously issued by the BIR since these were issued to other entities other than CLDH. Hence, this request.

In reply, please be informed that requests for rulings on issues covered by an on-going assessment or audit by the Revenue District Offices of the Bureau is a "No Ruling Area" under Section 2 (r) of Revenue Bulletin (RB) No. 01-03. Therefore, this Office is not allowed to dispense a ruling or render an opinion on the transaction under consideration. Section 2 (r) of Revenue Bulletin 01-03 provides:

> *"SECTION 2. List of No-Ruling Areas. — The following shall hereby be construed and identified as "No-Ruling Areas":*
>
> xxx xxx xxx
>
> *r) Issue/s or transactions involving directly or indirectly the same taxpayer/s which is/are the subject of an investigation, on-going audit, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal subject to Section 3 hereunder. Accordingly, the taxpayer must submit and include the following statement in the request for ruling: The issue/s or transaction subject of the request is not under investigation, on-going audit, administrative protest, claim for refund or issuance of a tax credit certificate, collection proceedings, or a judicial appeal of the taxpayer/s involved';"*

In view of the fact that there is already an assessment issued by RDO 17-A to CLDH, this Office declines to issue a ruling on the issue raised.

Please be guided accordingly.

Very truly yours,

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

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