REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Bureau of Internal Revenue Ruling

Sections 24 (C), 98, and 175 of the National Internal Revenue Code of 1997, as amended; Revenue Regulations No. 02-2003		OT-0184-2020

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36 / 927-09-63

Date: FEB 11 2020

ARANETA & FAUSTINO LAW OFFICES
Unit 203 Le Metropole Building
Corner De La Costa and Tordesillas Streets
Salcedo Village, Makati City 1227

Attention: **ATTY. DAISY L. PARKER**

ATTY. ALVIN T. PAGAYATAN

ATTY. GLORYDEE A. COMPARATIVO

Gentlemen:

This refers to your letter dated February 19, 2018, requesting on behalf of your client, **Ms. Kathleen Mendieta ("Ms. Kathleen")**, an American citizen, of legal age, and with local address at 36 Valencia St., Corinthian Place, Quezon City, for confirmation of your opinion that:

1. the shares of stock of domestic corporations registered in the name of a decedent but held in trust for a beneficial owner does not form part of the estate of the decedent and should be excluded in the computation of the estate tax; and

2. the transfer of shares of stock of domestic corporations from the decedent-trustee to the beneficial owner, as a result of the death of the decedent-trustee, and without monetary consideration, is exempt from capital gains tax ("CGT"), documentary stamp tax ("DST"), and donor's tax.

Further, you also request confirmation of your opinion that the corporate secretary of the concerned domestic corporations may transfer the shares held in trust by the decedent-trustee to the beneficial owner upon the issuance of a favorable ruling without the necessity of securing a tax clearance.

Documents submitted disclosed that Mendieta & Inunciaga, Inc. ("M&I"), Mendal Realty Management and Development Corporation ("MRMDC"), and Mendalsa Realty, Inc. ("MRI") are domestic corporations, duly organized and existing under the laws of the Republic of the Philippines, with the following Securities and Exchange Commission ("SEC") Company Registration Numbers and offices addresses:

NAME	SEC REGISTRATION NO.	ADDRESS
M&I		Hacienda San Jose, Tanjay City, Negros Oriental
MRMDC		Hacienda San Jose, Tanjay City, Negros Oriental
MRI		164 A. Bonifacio St., Canlalay, Binan, Laguna

On November 25, 2009, Ms. Maria Soledad B. Mendieta ("Ms. Maria Soledad"), of legal age, with residence and postal address at Unit 12A Sapphire Residences, 2nd Avenue corner 31st Street, Bonifacio Global City, Taguig City, and owner of several shares of stock in the above-named domestic corporations, executed three (3) Deeds of Assignment, to wit:

1. Assigning, transferring, and conveying in favor of Mr. Luis Maria B. Mendieta ("Mr. Luis Maria"), Mr. Eduardo B. Mendieta ("Mr. Eduardo"), and Mr. Javier B. Mendieta ("Mr. Javier"), the following shares of stocks in M&I:

Name of Stockholder	No. of Shares
Mr. Luis Maria	
Mr. Eduardo	
Mr. Javier	

with stipulation that out of the shares being assigned to Mr. Luis Maria shall be transferred in the name of Mr. Luis Maria in trust for Ms. Kathleen;

2. Assigning, transferring, and conveying in favor of Mr. Luis Maria, Mr. Eduardo, Ms. Kathleen, and Mr. Javier, the following shares of stocks in MRMDC:

Name of Stockholder	No. of Shares
Mr. Luis Maria	
Mr. Eduardo	
Ms. Kathleen	
Mr. Javier	

with stipulation that out of the shares being assigned to Mr. Luis Maria shall be transferred in the name of Mr. Luis Maria in trust for Ms. Kathleen; and

3. Assigning, transferring, and conveying in favor of Mr. Luis Maria, Mr. Eduardo, and Mr. Javier, the following shares of stocks in MRI:

Name of Stockholder	No. of Shares
Mr. Luis Maria	
Mr. Eduardo	
Mr. Javier	

with stipulation that out of the shares being assigned to Mr. Luis Maria shall be transferred in the name of Mr. Luis Maria in trust for Ms. Kathleen.

On the same date, Mr. Luis Maria executed a Declaration of Trust, acknowledging that part of the above-mentioned shares of stock in the above-named domestic corporations registered in his name are beneficially owned by his niece, Ms. Kathleen, to wit:

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ISSUER	NO. OF SHARES	STOCK CERT NO.
M&I		
MRMDC		
MRI		

On January 15, 2016, Mr. Luis Maria passed away. His legal heirs are now in the process of settling his estate. Hence, this request.

In reply thereto, please be informed as follows:

1. Section 4 of Revenue Regulations (RR) No. 02-2003[1] (Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by Republic Act No. 8424, the Tax Reform Act of 1997) dated December 16, 2002, provides the composition of gross estate as follows:

> *"SECTION 4. Composition of the Gross Estate. — The gross estate of a decedent shall be comprised of the following properties and interest therein at the time of his death, including revocable transfers and transfers for insufficient consideration, etc.:*
>
> *A) Residents and citizens — all properties, real or personal, tangible or intangible, wherever situated.*
>
> *xxx xxx xxx"*

Applying the above-quoted provision in this case, the gross estate of Mr. Luis Maria, a Filipino citizen, shall be comprised only of all properties, real or personal, tangible or intangible, wherever situated, and interest therein at the time of his death, and should not include those properties which were merely held in trust for the benefit of Ms. Kathleen.

A declaration of trust has been defined by the Supreme Court as an act by which a person acknowledges that the property, title to which he holds, is held by him for the use of another.[2] A trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter.[3]

As such, while Mr. Luis Maria held legal title to the subject shares of stock as trustee, the equitable or beneficial ownership belonged to Ms. Kathleen as trustor. Thus, in the computation of the estate tax payable by the estate of Mr. Luis Maria, the subject shares of stock should be excluded.

2. A trust terminates upon the death of the trustee where the trust is personal to the trustee in the sense that the trustor intended no other person to administer it.[4] Thus, upon the death of Mr. Luis Maria, the trustee, the subject shares of stock should be transferred back to Ms. Kathleen, who is the beneficial owner thereof, and such transfer is not subject to CGT imposed under Section 24 (D) (1) of the National Internal Revenue Code (NIRC) of 1997, as amended, considering that the conveyance is not motivated by a valuable consideration and merely acknowledges and confirms the legal title and beneficial ownership over the shares of stock in the name of Ms. Kathleen, the trustor.[5]

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[1] RR No. 02-2003 was used since the decedent died prior to the effectivity of RA No. 10963 (TRAIN Law).
[2] Resurreccion De Leon, et al. vs. Emiliana Molo-Peckson, et al., G.R. No. L-17809, December 29, 1962.
[3] Cañezo v. Rojas, G.R. No. 148788, November 23, 2007, 538 SCRA 242, 251; Tigno v. Court of Appeals, G.R. No. 110115, October 8, 1997, 280 SCRA 262, 271-272, citing Morales v. Court of Appeals, 274 SCRA 282 (1997).
[4] Soledad Cañezo, substituted by William Cañezo and Victoriano Cañezo vs. Concepcion Rojas, G.R. No. 148788, November 23, 2007.
[5] BIR Ruling No. 051-2015 dated February 24, 2015.

Likewise, it is not subject to donor's tax imposed under Section 98 of the NIRC of 1997, as amended, since the transfer merely consolidates the legal title and beneficial ownership of the shares of Ms. Kathleen, the trustor.

In BIR Ruling No. 031-99 dated March 19, 1999, this Office has already ruled that:

> *"... the conveyance by the Trustee in favor of the Trustor of the subject properties which the former acquired by virtue of the Trust Agreement is not to be treated as another transfer separate and distinct from the sale between the original owner and the Trustee. The conveyance is merely to be treated as a continuation and confirmation of title in favor of the ultimate and real beneficiary of the subject properties."*

Moreover, the transfer is not subject to DST imposed under Section 196 of the NIRC of 1997, as amended.

It is, however, understood that this Ruling is never intended, and shall not be construed, as giving authority to the Corporate Secretary of M&I, MRMDC, and MRI to effect transfer of the Certificate of Stocks in the name of Ms. Kathleen without the necessary Certificate Authorizing Registration (CAR) 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 CAR as prescribed in Revenue Memorandum Circular (RMC) No. 37-2012.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue
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