April 3, 2019

BIR RULING NO. 221-19

BIR Ruling No. 431-2017; BIR Ruling No. 633-2012; BIR Ruling No. 178-2013

Lapanday Holdings Corporation
Lapanday Center, 2263 Pasong Tamo Extension
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated April 5, 2018 requesting (a) the withdrawal of your request for a ruling on the tax consequences of the transfer by BBB (BBB) of her shareholdings in Lapanday Holdings Corp. (LHC), Grand Metro Lorenzo Corp. (GMLC), Granbel Development Corp. (GDC) and Pioneer Venture, Inc. (PVI) in favor of eight (8) corporations in exchange for the latter's shares of stocks; and (b) confirmation that the rescission of said exchange of shares of stock will not be treated as a repurchase of the exchange shares and, thus, not subject to the applicable taxes.

The facts as represented are as follows:

1. BBB proposed to transfer all her shares of stock in LHC, GMLC, PVI, and GDC to Tulipano Holdings Corp., Marlor Prime Holdings Corp., Malca Lorenzo Holdings Corp., East Windward Lorenzo Holdings Corp., Franklintown Holdings, Inc., 18801476 Holding Corp., Burundie Holdings Corp., and Evergrow Lorenzo Ventures, Inc. (the "8 Corporations") in exchange for the shares of stock of the 8 Corporations.

2. In your letter dated 3 January 2012, you requested our ruling that (a) no gain or loss shall be recognized in the foregoing exchange of shares of stock between BBB and the 8 Corporations with BBB gaining control of each of the 8 Corporations, (b) said exchange of shares of stock is not subject to donor's tax, and (c) the transfer of the shares of stock by BBB in LHC, GMLC, PVI, and GDC is not subject to documentary stamp tax.

3. In your letter dated 5 April 2018, you requested to withdraw your said

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request for a ruling as the parties to the exchange of shares of stock "could not consummate the exchange of shares in light of the non-issuance of the BIR ruling to date." You stated that "BBB and the 8 Corporations will completely rescind the foregoing exchange of shares and BBB will pay in cash the shares of stock of the 8 Corporations that she subscribed."

4. To date, the exchange of shares of stock has not been implemented or completed. The LHC, GMLC, PVI, and GDC shares of stock remain in the name of BBB and all dividends thereon were paid and continue to be paid to BBB.

Hence, you now request for confirmation that the rescission of the exchange of shares of stock will not be treated as BBB's repurchase of her shares of stock in LHC, GMLC, PVI, and GDC and, thus, will not be subject to applicable taxes.

In reply, please be informed that in the case of *Mariano Z. Velarde, et al. vs. Court of Appeals, et al., G.R. No. 108346* dated July 11, 2001, the Supreme Court held that "(t)o rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made." This ruling was reiterated in the more recent case of *Gotesco Properties, Inc. vs. Fajardo, G.R. No. 201167*, dated February 27, 2013.

Based on the foregoing, the rescission of a contract would not give rise to a taxable event for two reasons: a) the result of rescission is that it is as if there was no sale, transfer or exchange, and hence, no income is realized; and b) the return of the object of the rescinded contract is not for monetary consideration and is merely an acknowledgement or confirmation of the title and ownership of the original owner of the property. *(BIR Ruling No. 431-2017 dated September 6, 2017)*

In view thereof, we rule and confirm that the rescission of the exchange of BBB's shares of stock in LHC, GMLC, PVI, and GDC for the shares of stock of the 8 Corporations will not be considered BBB's repurchase of her LHC, GMLC, PVI, and GDC shares of stock and will not be subject to the capital gains tax and documentary stamp tax.

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

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Commissioner of Internal Revenue