July 18, 2019

BIR RULING NO. 386-19

Revenue Memorandum Circular (RMC)
003-2014; Amended BIR Ruling No. DA
(C-133) 431-2008, as circularized by RMC
003-2014

Property Company of Friends, Inc.
55 Tinio Street, Barangay Addition Hills
Mandaluyong City, Philippines

Attention: *AAA*

Gentlemen :

This refers to your request for confirmation on the tax implications of the transfer of real properties in redemption and retirement of shares.

It is represented that Property Company of Friends, Inc. ("**PCFI**") is a domestic corporation engaged in real estate business registered with the Securities and Exchange Commission ("**SEC**") under Company Registration No. A199902864; that pursuant to its Amended Articles of Incorporation, the primary purpose of PCFI is to own, use, improve, develop, subdivide, sell, exchange, and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures; and that PCFI has an authorized capital stock of P_____ divided into 124,050,000 voting common shares with a par value of P_____ per share, 64,531,712 redeemable Series A Preferred Shares with a par value of P_____ per share, and 18,300,000 Series B Preferred Shares with par value of _____ Pesos (P_____) per share.

It is further represented that GT Capital Holdings, Inc. ("**GTCAP**"), a domestic corporation listed with the Philippine Stock Exchange (PSE), is the owner of record of the 64,530,712 redeemable Series A Preferred Shares of PCFI ("**GTCAP Series A Redeemable Preferred Shares**"), which represents fifty one percent (51%) of the total subscribed voting shares of PCFI.

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On 10 May 2019, the Board of Directors of PCFI resolved to redeem the GTCAP Series A Redeemable Preferred Shares by the assignment and transfer of real properties owned by PCFI in favor of GTCAP. The redeemable GTCAP Series A Redeemable Preferred Shares shall be cancelled and retired upon its redemption and consequently, the authorized capital stock of PCFI will be reduced by the number and amount of the GTCAP Series A Redeemable Preferred Shares so redeemed.

Lastly, it was represented that a Redemption Agreement was signed by PCFI and GTCAP on 10 May 2019 ("**Redemption Agreement**") whereby the GTCAP Series A Redeemable Preferred Shares shall be redeemed and eventually cancelled and retired upon redemption by PCFI, in exchange for the transfer of certain real properties owned by PCFI ("**Selected Assets**") [1] in favor of GTCAP.

On the bases of the foregoing, you now request for confirmation of the following:

1. PCFI will not be subject to income tax on the transfer of Selected Assets from PCFI to GTCAP in redemption of the GTCAP Series A Redeemable Preferred Shares pursuant to the Redemption Agreement; consequently, the transfer of Selected Assets from PCFI to GTCAP in redemption of the GTCAP Series A Redeemable Preferred Shares will not be subject to creditable withholding tax ("CWT");

2. The transfer of Selected Assets from PCFI to GTCAP pursuant to the Redemption Agreement and relevant Deed/s of Assignment is not subject to documentary stamp tax ("DST"); and

3. The redemption of GTCAP Series A Redeemable Preferred Shares by PCFI under the Redemption Agreement is not subject to DST.

In reply, please be informed as follows:

1. The transfer of the Selected Assets from PCFI to GTCAP in redemption and cancellation of the GTCAP Series A Redeemable Preferred Shares will not be subject to income tax and CWT on the part of PCFI.

   In Revenue Memorandum Circular (RMC) No. 3-2014 which circularized the amended BIR Ruling No. DA (C-133) 431-2008, this Office had the occasion to rule that on the part of the transferor, in this case, PCFI, the transaction is not subject to income tax considering that the redeeming corporation does not realize any gain or loss on the redemption of its shares. The shares so redeemed or reacquired shall be considered retired and no longer issuable, and hence, no gain shall be realized by the

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redeeming corporation. Accordingly, the redeeming corporation, is not subject to income tax on its receipt of the shares surrendered by stockholders pursuant to the redemption. Moreover, PCFI is not subject to income tax, and consequently to the CWT, on the transfer of Selected Assets in redemption of the GTCAP Series A Redeemable Preferred Shares.

Note, however, that while PCFI is not subject to income tax, GTCAP shall be liable for income tax on any resulting gain on the redemption of GTCAP Series A Redeemable Preferred Shares. When preferred shares are redeemed for retirement in accordance with its nature, pursuant to Revenue Regulations No. 6-2008, the capital gain or capital loss derived upon redemption shall be recognized on the basis of the difference between the amount/value received at the time of redemption and the cost of the preferred shares. The capital gain or capital loss shall be subject to the regular income tax rate under the 1997 Tax Code, as amended.

Thus, on the part of GTCAP, any gain realized by it on the redemption of shares by PCFI shall be subject to corporate income tax pursuant to Section 27 (A) of the 1997 Tax Code, as amended.

2. The redemption of GTCAP Series A Redeemable Preferred Shares by PCFI under the Redemption Agreement is not subject to DST.

DST on transfer of shares is governed by Section 175 of the 1997 Tax Code, as amended, which provides:

"SEC. 175. Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares of Certificates of Stock. — On all sales, or agreements to sell, or memoranda of sale, or deliveries, or transfer of due-bills, certificates of obligation, or shares of certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of Seventy five centavos (P0.75) on each Two hundred pesos (P200) or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock: x x x."

In BIR Ruling [DA-318-05] dated 15 July 2005, this Office opined that Section 175 of the 1997 Tax Code, as amended, imposes DST on all sales

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or agreements to sell, or memoranda of sale, or deliveries, or transfer of shares whether entitling the holder in any manner to the benefit of the shares. Citing BIR Ruling No. 039-02 dated 11 November 2002, and BIR Ruling DA-174-03, dated 03 June 2003, it was ruled that no DST shall be due on the surrender and cancellation of shares in case of a partial liquidation. The surrender of the shares does not constitute a sale, assignment or transfer because the liquidating corporation is not taking title to the surrendered shares and the shares are retired and not retained as treasury shares. In effect, the liquidating corporation does not realize any benefit, as owner or otherwise, from its receipt of the shares.

3. The transfer of Selected Assets from PCFI to GTCAP is not subject to DST.

DST on transfer of real property is governed by Section 196 of the 1997 Tax Code, as amended, which provides:

"SEC. 196. Stamp tax on Deeds of Sale and Conveyances of Real Property. — On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement, or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: x x x."

In the case of *Commissioner of Internal Revenue v. La Tondeña Distillers, Inc.*, [2] citing the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, [3] the Supreme Court held that Section 196 of the 1997 Tax Code, as amended, pertains only to sale transactions where real property is conveyed to a purchaser for a consideration. The Supreme Court explained in this wise:

"[W]e do not find merit in petitioner's contention that Section 196 covers all transfers and conveyances of real property for a valuable consideration. A perusal of the subject provision would clearly show it pertains only to sale transactions where real property is conveyed to a purchaser for a consideration. The phrase "granted, assigned, transferred or otherwise conveyed" is qualified by the word "sold" which means that documentary stamp tax under Section 196 is imposed on the transfer of realty by way of sale and does not apply to all conveyances of real property. Indeed, as correctly noted by the respondent, the fact that Section 196 refers to words "sold", "purchaser" and "consideration" undoubtedly leads to the conclusion that only sales of real property are

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contemplated therein. x x x"

RMC No. 3-2014, insofar as it imposes DST on the transfer of real property in redemption of shares, no longer applies as it was deemed amended by the aforesaid Supreme Court Decisions. Note, however, that while the transfer of Selected Assets from PCFI to GTCAP cannot be deemed as sale, for the purpose of imposing the DST under Section 196 of the 1997 Tax Code, as amended, it is considered as a "deemed sale" transaction subject to value-added tax ("VAT") by express provision of Section 106 (B) of the same Code, to wit:

"(B) Transactions Deemed Sale. — The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;"

Hence, the transfer of the Selected Assets from PCFI to GTCAP, though exempt from DST under Section 196 of the 1997 Tax Code, as amended, shall be subject to VAT of twelve percent (12%) based on the redemption transfer value or the fair market value of the properties, whichever is higher.

This shall serve as sufficient basis for the concerned Revenue District Officers to issue the Certificates Authorizing Registration over the Selected Assets.

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. See Schedule 2 of the Redemption Agreement.
2. G.R. No. 175188, 15 July 2015.
3. G.R. No. 192398, 29 September 2014.

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