March 9, 2018

BIR RULING NO. 429-18

Sec. 2 (t) of Revenue Bulletin No. 01-2003; BIR Ruling No. 264-15

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Sir :

This refers to your letter dated November 28, 2016, requesting for the review and consideration of the initial decision issued by former Commissioner Kim S. Jacito-Henares, in her letter dated June 28, 2016, regarding your request for tax exemption from the payment of Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) on the intended dissolution of your Trust Account with Metropolitan Bank & Trust Company.

Background:

On September 15, 2011, you purchased a residential condominium unit, particularly, _____. Prior to the actual purchase, you consulted a lawyer regarding the registration of the title to the Unit taking into consideration that during that time, you were a US citizen, single, never married, no children, no surviving natural siblings, and both of your natural parents are deceased. You were advised under the circumstances that it is best to register the title to the Unit under a Trust Account which would do away with legal succession and probate issues in the future. Accordingly, this will allow you more freedom to designate a beneficiary of your choice should anything happen to you.

You subsequently entered into a trust agreement with Metropolitan Bank & Trust Company-Trust Banking Group, a division of Metropolitan Bank & Trust Company (Metrobank). At that time, you were assured by Metro-Trust representatives that it would be a simple matter should you ever wish to dissolve the said Trust Account, and that the only costs you would incur would be some minor administrative fees.

You ultimately decided to dissolve the said Trust Account, however, you were informed by a Metro-Trust representative at that time, that to do so would subject the transaction to capital gains tax.

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You subsequently consulted with various law firms and conducted your own research into the matter and have come across a BIR Ruling issued by the former Commissioner, Kim S. Jacinto-Henares, on February 20, 2014. A reading of the Ruling reflects that the facts and issues involved in that case are in all fours with your case so that by inference, you should not be subject to capital gains tax upon the dissolution of your Trust Account and the subsequent registration of the title to the Unit in your name, pursuant to Section 24 (D) (1) of the National Internal Revenue Code of 1997, as amended. Further, according to the said Ruling, neither should you be subject to documentary stamp tax under Section 196 of the National Internal Revenue Code of 1997, as amended.

You then filed a written request for ruling on the exemption of capital gains tax and documentary stamp tax during the latter part of July 2015. Nearly one year later, you received a letter from the former Commissioner, Kim S. Jacinto-Henares, stating that the request for an official decision was hypothetical, thus, unable to issue a ruling on the matter. Hence, this request.

In reply, please be informed that under Revenue Bulletin No. 01-2003, the ruling function is limited to the determination of purely legal issues, as opposed to questions of fact. Accordingly, the Revenue Bulletin declared certain issues or subject matter as "No-Ruling Areas," on which the appropriate office of the Bureau is hereby instructed not to accept any request for rulings covered by said Revenue Bulletin or any amendments thereto.

Section 2 (t) 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

t) Request for rulings on issue/s or transactions based on hypothetical situations.

xxx xxx xxx"

In view of your representation that the dissolution of your Trust Account has still not yet materialized, this Office maintains that it cannot as yet issue a definitive ruling or opinion on the above matter considering that the issue is based on hypothetical situation, which is considered as a "No-Ruling Area" pursuant to Section 2 (t) of Revenue Bulletin 01-03. ***(BIR Ruling No. 264-15 dated July 30, 2015)***

Be that as it may, we would be glad to assist you should you request for a ruling when the transaction has already been executed.

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Please be guided accordingly.

Very truly yours,

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

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