December 19, 2016

BIR RULING NO. 445-16

Sections 27 (D) (5); 98; 105; 188; 196; BIR Ruling No. 329-12; BIR Ruling No. 332-12

UnionBank
UnionBank Plaza
Meralco Avenue cor. Onyx & Sapphire Roads
Ortigas Center, Pasig City

Attention: *AAA*

and
BBB

Gentlemen :

This refers to your letter dated May 12, 2014 which was indorsed by the Regional Director, Revenue Region No. 8, Makati City dated June 30, 2014 requesting for confirmation that the termination, liquidation and reversion of the property (real and personal) back to the trustor, subject of the Trust Agreement entered into by and between CCC, as Trustor and Unionbank of the Philippines, as the Trustee, is not subject to income tax, capital gains tax and withholding tax on the ground that there is no sale or transfer of property involved in the said transaction.

From the documents submitted, the facts are as follows:

1. On July 1, 1999, CCC (hereinafter referred to as the "Trustor") entered into a Trust Agreement with International Exchange Bank (as the "Trustee"), by virtue of which Trust Account No. _____ was established, whereby the Trustor conveyed to the Trustee, the amount of _____ Pesos (P_____) in cash, to be held in trust, managed, invested, and reinvested and for such other purpose for the benefit of DDD, EEE, FFF and GGG, as the Beneficiaries.

Copyright 2020 CD Technologies Asia, Inc.

2. Pursuant to the terms of the Trust Agreement, the Trustee purchased from Rufcor, Inc. on July 5, 1999, using the funds held in trust, a condominium unit, known as Unit No. 712 of the Asian Mansion I Condominium (Property 1) located at Dela Rosa Street, Legaspi Village, Makati City with a total area of 35.72 sq.m. more or less, covered by Condominium Certificate of Title No. 28548 of the Registry of Deeds of Makati City (the "Property") and caused the same to be registered in the name of the Trustee under its Trust Account No. _____.

3. On July 15, 1999, the Trustor opened another Trust Account with the Trustee under Trust Account No. _____ with initial investment of _____ Pesos (P_____) in cash. With the aforesaid cash investment, the Trustee purchased a condominium unit, known as Unit 919 of the Asian Mansion I Condominium (Property 2) located at Dela Rosa Street, Legaspi Village, Makati City with a total area of 39.90 sq.m. more or less, covered by Condominium Certificate of Title No. 20782 of the Registry of Deeds of Makati City (the "Property") and caused the same to be registered in the name of the Trustee under its Trust Account No. _____.

4. International Exchange Bank has since merged with the UnionBank of the Philippines and the merger took effect on August 28, 2006, with the latter being the surviving entity.

5. A Certification was issued by UnionBank stating that after the merger, Trust Account Nos. _____ and _____ with International Exchange Bank became Account Nos. _____ and _____, respectively, with UnionBank. However, the said Account Nos. have new account numbers under UnionBank Account Nos. _____ a.k.a. _____ and _____ a.k.a. _____, respectively.

6. On April 28, 2014, a Deed of Release and Quitclaim was executed between CCC, as Trustor, and Unionbank of the Philippines, as Trustee, whereby the Trustor informed the Trustee of its decision to terminate, liquidate and/or close the Trust Account, as aforementioned, and as embodied in the Trust Agreement which the Trustor and Trustee executed on July 1 and 15 of 1999.

7. The Trustor now wants the Properties covered by the trust, particularly the Property 1 and 2 to be transferred back to his name.

Copyright 2020 CD Technologies Asia, Inc.

8. The owner of record of the said trust Property as appearing in the Condominium Certificates of Title Nos. 28548 and 20782 is still International Exchange Bank (which as previously stated is now UnionBank of the Philippines) and said successor entity as the owner of record is constrained, under applicable corporation, banking and trust law and regulation, to reconvey the trust res to give full effect to the wishes of the Trustor, CCC of putting the property which he owns, back to his name.

In reply thereto, please be informed that the transfer of title of the afore-stated properties by the trustee in favor of the trustor, who is the beneficial owner thereof is not subject to capital gains tax imposed under Sec. 27 (D) (5) of the Tax Code of 1997, as amended, nor to the creditable withholding tax prescribed in RR 2-98, as amended, considering that the conveyance is not motivated by a valuable consideration and merely acknowledges, confirms and consolidates the legal title and beneficial ownership over the properties in the name of CCC, the Trustor.

Furthermore, 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."

The transfer of the subject properties to CCC is not likewise subject to the 12% VAT because the said property is not held primarily for sale to customers or for lease in the ordinary course of trade or business.

The conveyance by Unionbank of the properties to CCC without any monetary consideration is not subject to gift tax imposed under Sec. 98 of the 1997 Tax Code, since there is no donative intent on the part of the Trustee.

The Deed of Release and Quitclaim executed to terminate the trust relationship between the Trustee and CCC and the consolidation of the legal title and beneficial ownership over the subject properties is a conveyance without monetary consideration, and as such not subject to the documentary stamp tax imposed under Sec. 196 of the same Tax Code, as amended. However, the notarial acknowledgment to such deed is subject to the documentary stamp tax of P15.00 under Sec. 188 of the 1997 Tax Code. *(BIR Ruling No. 332-12 dated May 14, 2012)*

Copyright 2020 CD Technologies Asia, Inc.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

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

Copyright 2020 CD Technologies Asia, Inc.