October 1, 2019

BIR RULING NO. 546-19

Secs. 24 (D) (1), 98, 105, 196 of the 1997 NIRC, as amended; BIR Ruling No. 329-12

Jater Development Corporation
Suite 602 Emerald Mansion F. Ortigas Jr. Road,
Ortigas Center, Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 11, 2017, requesting on behalf of **JATER DEVELOPMENT CORPORATION** ("**JDC**" for brevity), for a ruling that the transfer and reconveyance of the title of the properties to the trustor from the trustee is not subject to the capital gains tax (CGT), creditable withholding tax, value added tax (VAT), gift tax and documentary stamp tax (DST).

It is represented that JDC, with Tax Identification Number (TIN) 000-000-000-000, is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. 40941; that it is the actual owner of the Condominium Unit _____, with an area of 93.67 square meters, together with Parking Slot with an area of 12.50 square meters, located at _____; that on July 10, 2007, JDC entered into a Deed of Trust with BBB, in which the former has caused the Condominium Unit _____ to be registered in the name of BBB under Condominium Certificate of Title No. PT-00000 of the Registry of Deeds for Pasig City to be held by him in trust on behalf of JDC; and on August 25, 2016, BBB executed an Affidavit of Admission and Undertaking that the Condominium Unit _____ under CCT No. PT-00000 is being held in his name and expressly undertake not to sell, encumber, transfer, or convey the unit/s covered by the CCT No. PT-00000 without a Board Resolution from JDC authorizing such activity.

On June 23, 2017, JDC issued a Board Resolution No. 2017-014, [1] deciding that the Condominium Unit _____ under CCT No. PT-00000, which was placed in trust in the name of BBB, be transferred and conveyed to JDC; that pursuant to the said Board Resolution No. 2017-014, BBB executed on September 28, 2017, a Deed of Transfer and Reconveyance, whereby BBB, ceded, transferred and reconveyed the Condominium Unit

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_____ under CCT No. PT-00000 to JDC as the actual owner thereof.

You now request for a confirmation of opinion that in as much as the Deed of Transfer and Reconveyance referred to above involved no real transfer of ownership the same is exempt from the payment of CGT, creditable withholding tax, VAT, gift tax and DST.

In reply thereto, please be informed as follows:

The transfer of title of the afore-stated property by the Trustee, BBB, in favor of the JDC, who is the actual owner thereof is not subject to CGT imposed under Sec. 24 (D) (1) of the Tax Code of 1997, as amended, nor to the creditable withholding tax prescribed in RR 2-98, as amended, considering that the transfer and reconveyance is not motivated by a valuable consideration and merely acknowledges, confirms and consolidates the legal title and actual ownership over the properties in the name of JDC, the Trustor.

Furthermore, in *BIR Ruling No. 329-12 dated May 11, 2012*, 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 properties to JDC is not likewise subject to the 12% VAT because the said property is not held primarily for sale to customer or for lease in the ordinary course of trade or business.

The transfer and reconveyance of the property to JDC 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 Transfer and Reconveyance executed to terminate the trust relationship between the JDC and BBB, and the consolidation of the legal title and actual ownership over the subject property is a transfer and reconveyance without monetary consideration, and as such not subject to the DST imposed under Sec. 196 of the same Tax Code, as amended. However, the notarial acknowledgment to such deed is subject to the DST of P15.00 [2] under Sec. 188 of the 1997 Tax Code.

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.

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Very truly yours,

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

Footnotes

1. Secretary's Certificate dated September 25, 2017.
2. The old DST rate of P15.00 is used since the donation took place prior to the effectivity of R.A. No. 10963.

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