October 9, 2019

BIR RULING NO. 584-19

Sec. 24 (D) (1), NIRC; BIR Ruling No. 779-2018

Navarro and Associates
Suite 507 Cebu Holdings Center
Cardinal Rosales Avenue
Cebu Business Park
Ayala, Cebu City

Attention: *AAA*

Gentlemen :

This refers to your letters dated January 19, 2015 and August 12, 2016 requesting for a ruling that the conveyance of title of real property to the trustor from the trustee is exempt from taxes.

As represented, your client, **BBB** ("BBB"), a Filipino-U.S. citizen, temporarily based in _____. by reason of employment there, bought from Fuente Triangle Realty Development Corporation ("Fuente") one (1) condominium unit covered by Condominium Certificate of Title (CCT) No. C-0000 and Tax Declaration No. GRC0-00-000-00000-BA still in the name of Fuente and more particularly described as follows:

Unit No.	:	0000
Unit Area Detail	:	Ground = 35, Loft = 30.5, Balcony = 0
Total Unit Area	:	65.5 sq. in.

Since BBB is in Texas, U.S.A. most of the time, she bought the aforementioned property through her brother, CCC and his wife DDD ("CCC and DDD" or "Trustees"). On January 26, 2013, BBB, CCC and DDD executed a Deed of Recognition of Trust Relationship and Waiver of Apparent Rights to confirm the trust relationship.

To prove that BBB is the beneficial owner of the subject condominium unit, Fuente issued Acknowledgment Receipts for documentary stamp tax and real property tax and has been issuing statements of account and official receipts for condominium

Copyright 2020 CD Technologies Asia, Inc.

dues in her name.

In reply, please be informed that Section 24 (D) (1) of the Tax Code of 1997, as amended provides, *viz.*:

> *"(D) Capital Gains from Sale of Real Property. —*
>
> *(1) In General. — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or -controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the Taxpayer."*

In the instant case, however, there is no sale, exchange or disposition of real property involved, since BBB is the real owner of the subject realty, while her brother CCC and his wife, DDD acted merely as trustees.

Moreover, the conveyance is not motivated by a valuable consideration considering that the reconveyance is for the purpose of returning the property to the legal owner and merely acknowledges, confirms and consolidates the legal title and beneficial ownership over the property in the name of BBB, the Trustor.

In BIR Ruling No. 031-99 dated March 19, 1999, this Office had occasion to rule 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."*

Accordingly, the transfer of title of the afore-stated property by the trustees in favor of the beneficiary, who is the beneficial owner thereof is not subject to capital gains tax 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, implementing Section 57 (B) of the Tax Code of 1997, as amended. *(BIR Ruling No. 779-2018 dated May 8, 2018)*

Under Section 196 of the Tax Code of 1997, as amended, the deeds or documents subject to the documentary stamp tax (DST) imposed therein are those where the realty sold shall be granted, assigned, transferred or otherwise conveyed to a purchaser or purchasers or to any other person or persons designated by such purchaser or purchasers,

Copyright 2020 CD Technologies Asia, Inc.

thereby excluding from its purview the instant case considering that the supposed purchaser is actually the owner thereof. Furthermore, under Section 191 of Revenue Regulations No. 26, otherwise known as the "Documentary Stamp Tax Regulations," conveyances to a trust without valuable consideration, or from a trustee to a *cestui que* trust without valuable consideration are not subject to tax. *(BIR Ruling No. 779-2018 dated May 8, 2018)*

Since the reconveyance of the afore-stated property by the Trustees in favor of BBB, the real owner thereof is in connection and in recognition of a trust, the said transfer, therefore, is not subject to the DST imposed under Section 196 of the Tax Code of 1997, as amended. However, the notarial acknowledgment to said deed of reconveyance is subject to the P15.00 [1] DST as imposed under Section 188 of the same Code.

Section 98 of the Tax Code of 1997, as amended provides that a donor's tax is generally imposed on the transfer by any person, resident or non-resident, of property by gift. The donor's tax applies, whether such transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. The essential elements of a valid donation are: (1) the reduction of the patrimony of the donor, (2) the increase in the patrimony of the donee, and (3) the intent to do an act of liberality *(animus donandi)*. In this case, there is no intention to donate on the part of the Trustees since the reconveyance merely transfers the ownership of the subject realty to the true buyer/owner, hence, the transfer of the property to Queen Marie by the Trustees is exempt from the donor's tax imposed under Section 98 of the same Tax Code.

Finally, the reconveyance is not subject to VAT because the said realty is not held primarily for sale to customers or for lease in the ordinary course of business. *(BIR Ruling No. 779-2018 dated May 8, 2018)*

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 null and void.

Very truly yours,

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

Footnotes

1. The old DST rate of P15.00 was used since the transaction took place prior to the effectivity of the TRAIN Law.

Copyright 2020 CD Technologies Asia, Inc.

Copyright 2020 CD Technologies Asia, Inc.