April 11, 2018

BIR RULING NO. 631-18

Mariano Z. Velarde, et al. vs. Court of Appeals, et al., G.R. No. 108346; *Philippine Home Assurance Corporation, et al. vs. Court of Appeals, et al.*, G.R. No. 119446; BIR Ruling No. 633-2012

Cariño and Associates Law Office
2nd Floor, R and E Bldg.
Doña Manuela Subd., Pamplona
Las Piñas City

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 4, 2014 requesting on behalf of your client, **BBB** ("**BBB**"), for exemption from the payment of capital gains tax (CGT) and documentary stamp tax (DST) on the reconveyance of a parcel of land executed pursuant to the Judgment dated May 22, 2012 of the Regional Trial Court (RTC), Branch 255, of Las Piñas City ("RTC Las Piñas").

It is represented that **BBB,** with Tax Identification No. 000-000-000, is the former registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-101800, with an area of 144 square meters; that on July 7, 2006, **BBB** conveyed the said property by way of a Deed of Absolute Sale to **Spouses CCC** and **DDD** ("**Spouses CCDD**") for a consideration of P_____ which the latter paid through the issuance of two (2) checks; that by virtue thereof, **Spouses CCDD** were able to register the property in their name under TCT No. 102168; that **BBB** was not able to encash said checks due to insufficient funds to cover the face amount thereof; that BBB lodged an action for the rescission of the Deed of Absolute Sale dated July 7, 2006 with RTC Las Piñas against **Spouses CCDD**; that RTC Las Piñas, after trial, rendered Judgment dated May 22, 2012 ordering the rescission of the Deed of Absolute Sale and the reconveyance of the subject property to **BBB**; and that on April 4, 2014, a Deed of Reconveyance was executed by the Branch Clerk of Court of RTC Las Piñas, in behalf of **Spouses CCDD**, reconveying the subject property to **BBB**.

Copyright 2020 CD Technologies Asia, Inc.

Based on the foregoing representations, you now request that the reconveyance of the subject property is no longer subject to CGT and DST.

In reply, please be informed that in the case of *Mariano Z. Velarde, et al. vs. Court of Appeals, et al., G.R. No. 108346* dated July 11, 2001, the Supreme Court held that "(t)o rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made."

Based on the above Court's pronouncement, the rescission of a contract would not give rise to a taxable event for two reasons: a) the result of rescission is that it is as if there was no sale, transfer or exchange, and hence, no income is realized; and b) the return of the object of the rescinded contract is not for monetary consideration and is merely an acknowledgement or confirmation of the title and ownership of the original owner of the property.

Such being the case, the reconveyance of the subject parcel of land to **BBB** in accordance with the Judgment of RTC Las Piñas dated May 22, 2012 and the Deed of Reconveyance dated April 4, 2014, is not subject to CGT imposed under Section 27 (D) of the 1997 Tax Code, as amended. Moreover, said reconveyance is not subject to DST pursuant to Section 185 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp Regulations, which provides that the conveyance of a real property without monetary consideration is not subject to the payment of DST. *(BIR Ruling No. 633-2012* dated November 26, 2012*)*

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

Copyright 2020 CD Technologies Asia, Inc.