December 9, 2019

BIR RULING NO. 760-19

Sec. 98, 1997 Tax Code, as amended; BIR Ruling No. 355-14

Beltran Apostol & Associates Law Firm
Unit 1809, West Avenue Suites
124 West Avenue, 1104 Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 15, 2018 requesting on behalf of your client, **Shalom Akademeia of Quezon City, Inc.** ("Shalom-QC" or "Second Party") for a ruling on whether the transfer to Shalom-QC of 50% of the property covered by reconstituted Transfer Certificate of Title (TCT) No. 000-0000000000 (formerly, TCT No. N-000000) with a total area of Three Thousand square meters (3,000 sq. m.) by way of Judgment on Compromise is subject to donor's tax.

Documents show that Shalom-QC is a non-stock corporation duly organized under Philippine laws and registered with the Securities and Exchange Commission (SEC), with principal business address at No. 56 Don Vicente Street, Don Antonio Heights, Quezon City. Its principal purpose is "to establish a Christian Child Learning Center for preschool up to grade school/High School."

Shalom Akademeia of Cavite, Inc. ("Shalom-Cavite" or "Third Party") is a domestic corporation registered under Philippine laws and with business address at NORMA Compound, General Mariano Alvarez, Cavite.

Norwegian Missionary Alliance-Philippine Branch (NORMA-Philippine Branch) is a branch of Norwegian Missionary Alliance, a foreign corporation organized and existing under the laws of Norway, with office at Units 403-404, Taipan Place, Ortigas Center, Pasig City.

The Superintendent of the Norwegian Missionary Alliance in the Philippines, Incorporated ("The Superintendent" or "First Party") is a corporation sole registered with the SEC, with principal office address at No. 158 Mother Ignacia Street, South Triangle, Quezon City.

The Superintendent is the absolute and sole owner of two parcels of land covered

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under TCT Nos. 000-0000000000 and T-0000000, registered with the Register of Deeds of Quezon City and the Cavite, respectively, including improvements thereon ("Commonwealth Property" and "Bulihan Property," respectively).

Shalom-QC was the occupant of some buildings and various areas of the Commonwealth Property owned by The Superintendent. The canteen and the building with three (3) school rooms was built by Shalom-QC.

Shalom-Cavite was the occupant of some buildings and various areas of the Bulihan Property owned by The Superintendent. Likewise, Building No. 3 was built by Shalom-QC.

On 1 July 2011, a Resolution was rendered by the Regional Trial Court of Quezon City (RTC-QC), Branch 98 in Civil Case No. Q-04-52465 entitled *Shalom Learning Center, Inc. vs. Norwegian Missionary Alliance — Philippine Branch and The Superintendent of the Missionary Alliance in the Philippines, Inc. as represented by Mr. Bjorn Eric Trongkleiv* approving the Compromise Agreement entered into by the parties, the pertinent portion of which reads as follows:

> "**WHEREAS** all parties agreed to explore an amicable solution to their disagreement, and various meetings and discussions among the authorized representatives of the parties were held. As a result of the foregoing, the First Party agreed to convey/give/donate to the Second Party the 50% portion of the Commonwealth Property subject to the terms of this Agreement and the Third Party hereby obligates itself to peacefully vacate the Bulihan property not later than 01 May 2012."

Under the said agreement, The Superintendent agreed to convey/give/donate to Shalom-QC 50% or One Thousand Five Hundred square meters (1,500 sq. m.) of the portion of its Commonwealth property (Conveyed Property) with a total area of Three Thousand square meters (3,000 sq. m.) where the buildings for school premises are erected. In return, Shalom-QC shall peacefully vacate and forever recognize the fee simple titles of The Superintendent over 1) the remaining 50% of the Commonwealth property where no building is erected and which is in The Superintendent's possession (Remaining Property); and 2) the Bulihan property.

By entering into the aforesaid Agreement, the parties undertake to dismiss all pending cases and refrain from initiating, instituting and/or pursuing any other claim or case of whatever nature against each other.

In reply, please be informed as follows:

The transfer of the Conveyed Property is not subject to donor's tax.

The transfer of the Conveyed Property by way of Judgment on Compromise is a necessary consequence of the requirement imposed under the Court-approved

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Compromise Agreement hence, there is no donative intent on the part of The Superintendent. Moreover, the conveyance is a mere recognition by Shalom-QC of The Superintendent's absolute ownership of the Conveyed Property. Such being the case, the aforesaid transfer is not subject to donor's tax imposed under Section 98 of the 1997 Tax Code, as amended.

The transfer of the Conveyed Property is subject to Capital Gains Tax.

Section 27 (D) (5) of the 1997 Tax Code, as amended, provides, *viz.*:

> *"Section 24 (D). Capital Gains from Sale of Real Property. — (1) In General. — The provision of Section 39 (B) notwithstanding, a final tax of 6% based on the gross selling price or current market value as determined in accordance with Section 6 (E) of this Code, whichever is higher, is hereby imposed upon the capital gains presumed to have been realized from the sale, exchange and* ***other dispositions 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: . . ." (emphasis supplied)*

Although the conveyance of the real property is pursuant to a court order, which approved the Compromise Agreement entered into by the parties to amicably settle their dispute over the Conveyed Property, the reconveyance of the property in favor of The Superintendent is covered by the clause "dispositions of land and/or buildings" under Section 27 (D) (5) of the 1997 Tax Code, as amended, and therefore subject to the capital gains tax imposed therein. Likewise, the conveyance per court-approved Compromise Agreement in the nature of disposition of real property under Section 27 (D) (5) of the 1997 Tax Code, as amended, is subject to the documentary stamp taxes imposed in Section 188 and Section 196 of the same Tax Code, as amended.

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

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