**May 8, 2018**

# BIR RULING NO. 779-18

Sections 27 (D) (5) & 99, NIRC; BIR Ruling No. 108-98; BIR Ruling No. 080-02

*Moldex Land, Inc.*
Moldex Building, Ligaya Street cor. West Avenue
Quezon City

Attention: *AAA*

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Gentlemen :

This refers to your letter dated February 9, 2018 requesting on behalf of 1.) BBB; 2.) CCC; 3.) DDD; 4.) EEE; 5.) FFF; and 6.) Moldex Land, Inc., for a ruling that the conveyance of the title of properties from the trustor to the trustee is not subject to Capital Gains Tax (CGT), creditable withholding tax (CWT), value-added tax (VAT), gift tax and documentary stamp tax (DST).

As a backgrounder, Moldex Land, Inc. (Trustor MLI) entered into several trust agreements with the above-enumerated persons, to wit:

Trustor MLI entered into a trust agreement with BBB (Trustee BBB), by virtue of a Deed of Trust dated 07 October 2017, whereby the Trustor MLI conveyed, without any monetary consideration, to Trustee BBB, the legal title of Condominium Unit 17-C1 with CCT No. 002-2017022689 located at 1322 Roxas Boulevard Condominium or also known as 1322 Golden Empire Tower (1322 Tower) only for the purpose of qualifying Trustee BBB to be elected as a member of the Board of Trustees of 1322 Roxas Boulevard Condominium Corporation (1322 CondoCor);

Trustor MLI entered into a trust agreement with CCC (Trustee CCC), by virtue of the Deed of Trust dated 07 October 2017, whereby Trustor MLI conveyed, without any monetary consideration, to Trustee CCC, the legal title of Condominium Unit 18-C1 with CCT No. 002-2017022497 located at 1322 Tower only for the purpose of qualifying Trustee CCC to be elected as a member of the Board of Trustees of 1322 CondoCor;

Trustor MLI entered into a trust agreement with DDD (Trustee DDD), by virtue of a Deed of Trust dated 07 October 2017 whereby Trustor MLI conveyed, without any

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monetary consideration, to Trustee DDD, the legal title of Condominium Unit 19-B1 with CCT No. 002-2017022498 located at 1322 Tower only for the purpose of qualifying Trustee DDD to be elected as a member of the Board of Trustees of 1322 CondoCor;

Trustor MLI entered into a trust agreement with EEE (Trustee EEE), by virtue of a Deed of Trust dated 07 October 2017, whereby Trustor MLI conveyed, without any monetary consideration, to Trustee EEE, the legal title of Condominium Unit 21-B1 with CCT No. 002-2017022499 located at 1322 Tower only for the purpose of qualifying Trustee EEE to be elected as a member of the Board of Trustees of 1322 CondoCor;

Trustor MLI entered into a trust agreement with FFF (Trustee FFF), by virtue of a Deed of Trust dated 15 December 2017 whereby Trustor MLI conveyed, without any monetary consideration, to Trustee FFF, the legal title of Condominium Unit 16-C1 located at 1322 Tower only for the purpose of qualifying Trustee FFF to be elected as a member of the Board of Trustees of 1322 CondoCor; and

Trustor MLI entered into these Deeds of Trust with the above-enumerated persons in order to transfer or confer legal title, without any consideration, to the latter for the purpose of qualifying these persons to be elected as members of the Board of Trustees of 1322 CondoCor. There is, in effect, no transfer of real properties since the individual Trustees acquired these properties by virtue of separate Trust Agreements. The individual trustees acknowledge and recognize that they are holding titles to said properties for and in behalf of their true and ultimate owner, Trustor MLI.

In view of the foregoing, you now request for a ruling that the conveyance of the title of properties from the trustor to the trustees is not subject to CGT, CWT, VAT, gift tax and DST.

In reply, please be informed that under Section 27 (D) (5) of the Tax Code of 1997, as amended, capital gains presumed to have been realized from the sale, exchange, or disposition of lands and/or buildings which are not actually used in the business of the corporation and are treated as capital assets shall be taxed at the rate of 6% based on the gross selling price or the fair market value thereof, whichever is higher. In the instant case, however, there is no sale, exchange or disposition of real property involved, since Trustor MLI is the real owner of the subject condominium units, while the individuals, namely, BBB, CCC, DDD, EEE and FFF, acted merely as trustees.

Accordingly, the transfer of titles over the subject condominium units from Trustor MLI to the individual trustees, without any monetary consideration and by virtue of the Deed of Trust each individual had executed separately, which effectively acknowledges the existence of a trust by and between them and MLI, is not subject to the CGT nor to the CWT prescribed under Revenue Regulations No. 2-98, as amended. *(BIR Ruling No. 108-98 dated June 29, 1998)*

Furthermore, the said transfer is not subject to the donor's tax imposed under Section 99 of the Tax Code of 1997, since there is no donative intent on the part of MLI

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to donate the subject properties to the trustees considering that it was made clear in the Deeds of Trust that the trustees are merely holding said properties for and on behalf of Trustor MLI.

Considering that the conveyance by MLI of the subject properties is pursuant to an express trust, it cannot be considered a transfer made in the ordinary course of trade or business, hence, not be subject to VAT imposed under Section 106 of the 1997 Tax Code, as amended.

Finally, 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. From the foregoing and since the above conveyances of the condominium units by Trustor MLI to the trustees are in connection and in recognition of an express trust, the said transfers, therefore, are not subject to the DST imposed under Section 196 of the Tax Code of 1997, as amended. However, the notarial acknowledgements to the Deeds of Trust executed by MLI in favor of the trustees are subject to the DST of P15.00 [1] pursuant to Section 188 of the same Code. *(BIR Ruling No. 080-02 dated April 29, 2002)*

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*

**Footnotes**

1. Old DST rate was used since the Deeds of Trust were executed prior to the effectivity of Republic Act (RA) No. 10963.

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