May 9, 2018

BIR RULING NO. 793-18

Sec. 27 (D) (2); 127 (A) NIRC; BIR Ruling No. 209-15

Social Security System
East Avenue, Diliman
Quezon City

Attention: *Emmanuel F. Dooc*
President and CEO

Gentlemen :

This refers to the letter dated March 15, 2012 of then President and CEO, Emilio S. De Quiros, Jr., requesting confirmation of the tax exemption of the Social Security System ("SSS"), particularly its exemption from capital gains tax and documentary stamp tax on the sale by SSS of its shares in Asiatrust Development Bank, Inc. ("ASIA") in favor of AAA and BBB.

It is represented that, on February 2, 2012, SSS and AAA and BBB executed a "Deed of Absolute Sale of Shares of Stocks" whereby the former transfers and conveys to the latter Nineteen Million Eight Hundred Ninety Six Thousand Four Hundred (19,896,400) issued and outstanding common shares, with par value of _____ Pesos (P_____) per share, of Asiatrust Development Bank, Inc., for a consideration of _____ Pesos (Php_____). The particulars of the shares subject of the Deed of Sale are as follows:

Stock Certificate No.	No. of Shares
022088	12,134,827
022099	7,761,522
022087	1
018509	48
022082	1
018625	1
Total	19,896,400

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In reply, please be informed that Section 27 (D) (2) of the 1997 Tax Code, as amended, provides for the taxability of gains derived from the sale of shares of stock not traded in the stock exchange, to wit:

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"(2) Capital Gains from the Sale of Shares of Stock Not Traded in the Stock Exchange. — A final tax at the rate of fifteen percent (15%) [1] *shall be imposed on net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange.*

xxx xxx xxx"

On the other hand, Section 127 (A) of the same Code sets forth the tax treatment of the gains derived from the sale of shares of stock listed and traded through the local stock exchange, *viz.*:

"(A) Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of six-tenths of one percent (6/10 of 1%) [2] *of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor"*

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It must be noted that, in both cases mentioned above, the burden of paying the tax due on the sale of the shares rests upon the seller, in this case the SSS, and not the buyer. Relative thereto, it is worth mentioning that Republic Act (RA) No. 1161, otherwise known as the *"Social Security Law,"* as amended by RA 8282, provides for the tax exemption of SSS from all taxes, to wit:

"SEC. 16. Exemption from Tax, Legal Process and Lien. — All laws to the contrary notwithstanding, the SSS and all its assets and properties, all contributions collected and all accruals thereto and income or investment earnings therefrom as well as all supplies, equipment, papers or documents shall be exempt from any tax, [3] *assessment, fee, charge, or customs or import duty; and all benefit payments made by the SSS shall likewise be exempt from all kinds of taxes, fees or charges, and shall not liable to attachments, garnishments, levy or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the member to the SSS. No tax measure of whatever nature enacted shall apply to the SSS, unless it expressly revokes the declared policy of the State in Section 2 hereof granting tax-exemption to the SSS. Any tax assessment imposed against the SSS shall be null and void."*

Furthermore, Section 27 (C) of the 1997 Tax Code, as amended, also provides for

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the exemption of SSS from income tax as follows:

> *"(C) Government-owned or -Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity."*

Based from the foregoing provisions, SSS is not liable to pay such rate of tax as imposed on other domestic corporations, including the payment of the capital gains tax or percentage tax, as the case may be *(BIR Ruling No. 209-15 dated June 19, 2015)*. Accordingly, SSS cannot be made liable to pay the capital gains tax/percentage tax on the sale of its ASIA shares in favor of its buyers.

However, Section 175 in relation to Section 173 of the Tax Code of 1997, as amended, provides that there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the documentary stamp tax imposed under Section 175 of the Tax Code of 1997, by the person making, signing, issuing, accepting or transferring the same wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines: Provided, that whenever one party to the taxable document enjoys exemption from the tax, the other party thereto who is not exempt shall be the one directly liable for the tax. In view thereof, the buyers are the ones liable for the payment of the documentary stamp tax due on the sale of the ASIA shares.

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. As amended by Republic Act No. 10963 (TRAIN Law).
2. As amended by Republic Act No. 10963 (TRAIN Law).
3. Section 86 (q) of RA No. 10963 repealed Sections 2 and 16 of RA No. 8282 insofar as VAT exemption of SSS is concerned.

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