May 10, 2018

BIR RULING NO. 810-18

Sections 27 (D) (5) & 58 (E), TC; 000-00

Sycip Salazar Hernandez & Gatmaitan
SSHG Law Centre, 105 Paseo de Roxas
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 18, 2010, requesting for legal opinion on the tax consequence of the Contract of Usufruct entered into by and between St. Agen Holdings, Inc. and BBB and CCC over a parcel of land and a building covered by Transfer Certificate of Title (TCT) No. 704466 of the Registry of Deeds for the Province of Rizal.

Based on the documents submitted, it is shown that, on March 30, 2009, St. Agen Holdings, Inc., as Landowner, and BBB and CCC, as Usufructuaries, entered into a Contract of Usufruct whereby the former granted in favor of the latter the right to use the above property, subject to the following conditions, among others:

1. The Contract of Usufruct shall remain effective during the lifetime of the Usufructuaries and shall automatically terminate upon the death of the last surviving Usufructuary.

2. The Usufructuaries shall have the right to use the Property for residential purposes in the manner prescribed in the Contract. No ownership on any part of the property shall vest in the Usufructuaries in relation to the effectivity of the Contract. The possession of the Property by the Usufructuaries shall not cause the running of the acquisitive prescription in favor of the Usufructuaries.

3. The Usufructuarties shall not use the property for any business, commercial purposes, or for other purposes other than residential. The property shall not be leased by the Usufructuaries.

4. St. Agen Holdings, Inc. reserves the right to sell, transfer, dispose of,

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mortgage, charge, hypothecate, create liens over or encumber the property to, or in favor of, a third party, provided that St. Agen Holdings, Inc. requires such third party to recognize and respect the Usufructuaries' rights under the Contract and to be bound by it.

5. The Usufructuaries shall have the Contract annotated on the TCT of the Property.

Relative to Condition No. 5 as stated above, the Registry of Deeds for the Province of Rizal has required a Certification from the Bureau of Internal Revenue (BIR) that the Contract of Usufruct is not taxable and that no taxes are due on the transaction.

In reply, please be informed that the requirement of a Certificate Authorizing Registration (CAR) prior to registration with the Registry of Deeds is provided under Section 58 (E) of the National Internal Revenue Code (NIRC), as amended, which states that:

> *"**(E) Registration with Register of Deeds**. — No registration of any document transferring real property shall be effected by the Register of Deeds unless the Commissioner or his duly representative has certified that such transfer has been reported, and the capital gains or creditable withholding tax, if any, has been paid: Provided, however, That the information as may be required by rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, shall be annotated by the Register of Deeds in the Transfer Certificate of Title or Condominium Certificate of Title: Provided, further, That in cases of transfer of property to a corporation, pursuant to a merger, consolidation or reorganization, and where the law allows deferred recognition of income in accordance with Section 40, the information as may be required by rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, shall be annotated by the Register of Deeds at the back of the Transfer Certificate of Title or Condominium Certificate of Title of the real property involved: Provided, finally That any violation of this provision by the Register of Deeds shall be subject to the penalties imposed under Section 269 of this Code."*

In this case, the Usufructuaries are applying for the annotation of the Contract of Usufruct on the title of the property. Usufruct gives the Usufructuary the right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. [1] Likewise the Usufructuary is entitled to all the natural, industrial, and civil fruits of the property in usufruct, [2] unless otherwise provided in the Contract of Usufruct. [3] It is noted that under the Contract, the Usufructuaries are not permitted to use the property for any business, commercial purposes, or for purposes other than residential. Also, St. Agen Holdings, Inc. reserves the right to sell, transfer, dispose of, mortgage, charge, hypothecate, create liens over or encumber the property to, or in favor of a third party.

From the foregoing, it appears then that a Contract of Usufruct does not involve

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transfer, conveyance or disposition of any portion of the real property or its ownership. A Contract of Usufruct is not a sale or transfer of real property because the owner of the property retains ownership thereof as it is expressly stated in the Contract that St. Agen Holdings, Inc. reserves the right to sell, transfer, dispose of, mortgage, charge, hypothecate, create liens over or encumber the property to, or in favor of, a third party.

Such being the case, the landowner, St. Agen Holdings, Inc., is not subject to the payment of capital gains tax (CGT) imposed under Section 27 (D) (5) of the NIRC of 1997, as amended. It is however understood that the income, if any, derived by the Usufructuaries from and as a consequence of the grant of the right to use the said property is subject to income tax.

It should be noted that CGT is a tax imposed on the gains presumed to have been realized by the seller from the sale, exchange, or other disposition of capital assets located in the Philippines, including *pacto de retro* sales and other forms of conditional sale.

There being no sale, conveyance, transfer or disposition of the land registered in the name of St. Agen Holdings, Inc., CAR is not required in order for the Contract of Usufruct to be annotated on the title of the subject property.

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. Article 562 of the Civil Code of the Philippines.
2. Article 566 of the Civil Code of the Philippines.
3. Article 552 of the Civil Code of the Philippines.

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