REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Secs 24(D)(1), 98, & 196, Tax Code of 1997, as amended
BIR Ruling No. 779-18
OT - 293 - 2022
JUN 14 2022

W. TAN LAW GROUP
67 Fifth Steet
New Manila
1112 Quezon City

Attention: **Atty. Pearlyn S. Tan**

Gentlemen:

This refers to your request on behalf of your client, **MRS. ZENAIDA V. TONGCO** ("Mrs. Tongco" or the "Trustor") for confirmation of your opinion that the reconveyance of the title of property from the trustee to the trustor is not subject to capital gains tax (CGT) and documentary stamp tax (DST).

Background

1. On August 31, 2009, Mrs. Tongco entered into a Trust Agreement with her son, Raymond Misael V. Tongco ("Mr. Tongco" or the "Trustee") for the purpose of holding only the legal title to properties located in Pinugay, Baras, Rizal that she was in the process of purchasing. The Trust Agreement was authenticated before Notary Public Joel G. Gordola in Quezon City and recorded in his notarial books as Document No. 301, Page No. 61, Book No. 60, Series of 2009.

2. Pursuant to the Trust Agreement, seventeen (17) Deeds of Absolute Sale were entered into by and between Milestone Farms, Inc. with Mr. Tongco on September 2, 2009, which was recorded in the notarial books of Delfin R. Agcaoili, Jr. in the City of Manila.

3. Said properties were transferred and registered in the name of the Trustee under new Transfer Certificates of Title (TCT), as follows:

Block No.	Lot No.	Area (in sq. m.)	Previous TCT No.	New TCT No.
16	1			
60	19			
60	20			

OT-293-2022
JUN 14 2022

Block No.	Lot No.	Area (in sq. m.)	Previous TCT No.	New TCT No.
77	47			
87	26			
7	29			
7	30			
8	33			
16	2			
22	4			
26	23			
26	24			
29	29			
29	30			
18	22			
34	8			
34	9			
38	11			
38	12			
39	38			
39	39			
44	7			
44	8			
45	10			
47	25			
47	26			
49	3			
49	4			
52	6			
52	7			
22	20			

OT- 293 - 2022
JUN 14 2022

Block No.	26Lot No.	Area (in sq. m.)	Previous TCT No.	New TCT No.
56	26			
56	27			
58	7			
58	8			
68	3			
68	4			
68	27			
68	28			
77	6			
77	7			
77	46			
79	39			
79	40			
86	9			
86	10			
22	5			
42	1			
88	10			
6	6			
6	3			
3	16			
3	15			
1	25			
2	8			
1	26			

4. Under the Trust Agreement, Mr. Tongco confirmed that he merely held legal title to the properties and acknowledged his status as trustee. Further under said Agreement, the parties agreed that either party may terminate said agreement for any reason upon prior written notice to the other.

OT-. 2 9 3 - 2 0 2 2
JUN 1 4 2022

5. On November 19, 2019, Mrs. Tongco gave due notice to the Trustee that she intended to terminate the Trust Agreement, and thereafter executed a Cancelation of Trust and Deed of Conveyance which was signed by both parties and recorded in the notarial books of Atty. Jose Floro P. Crisologo in Quezon City as Document No. 102, Page No. 31, Book No. 5-D, Series of 2019. In this document, the Trustee agreed to cancel the Trust Agreement and to convey the properties held by him back to the Trustor. Both parties acknowledged that based on the Trust Agreement, the Trustor has been the true and beneficial owner of the properties, and so the conveyance back to the Trustor was made without any monetary consideration.

In reply, please be informed that Section 24(D)(1) of the National Internal Revenue (Tax Code) of 1997, as amended provides, viz.:

"SEC. 24. Income Tax Rates. –

(D) Capital Gains from Sale of Real Property. –

(1) In General. — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition 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: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or -controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the Taxpayer."

In the instant case, however, there is no sale, exchange or disposition of real property involved, since Mrs. Tongco is the real owner of the subject properties, while Mr. Tongco acted merely as trustee.

Moreover, the conveyance is not motivated by a valuable consideration considering that the reconveyance is for the purpose of returning the property to the legal owner and merely acknowledges, confirms and consolidates the legal title and beneficial ownership over the property in the name of Mrs. Tongco, the Trustor.

In BIR Ruling No. 031-99 dated March 19, 1999, this Office had occasion to rule that:

". . . the conveyance by the Trustee in favor of the Trustor of the subject properties which the former acquired by virtue of the Trust Agreement is not to be treated as another transfer separate and distinct from the sale between the original owner and the Trustee. The conveyance is merely to be treated as a continuation and confirmation of title in favor of the ultimate and real beneficiary of the subject properties."

gw

OT- 293 - 2022
JUN 14 2022

Accordingly, the transfer of title of the afore-stated properties by the Trustee in favor of the beneficiary, who is the beneficial owner thereof is not subject to CGT imposed under Section 24 (D) (1) of the Tax Code of 1997, as amended nor to the creditable withholding tax prescribed in Revenue Regulations (RR) No. 2-98, as amended, implementing Section 57 (B) of the Tax Code of 1997, as amended. *(BIR Ruling No. 779-2018 dated May 8, 2018)*

Under Section 196 of the Tax Code of 1997, as amended, the deeds or documents subject to the DST imposed therein are those where the realty sold shall be granted, assigned, transferred, or otherwise conveyed to a purchaser or purchasers or to any other person or persons designated by such purchaser or purchasers, thereby excluding from its purview the instant case considering that the supposed purchaser is actually the owner thereof. Furthermore, under Section 191 of RR 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. *(BIR Ruling No. 779-2018 dated May 8, 2018)*

Since the reconveyance of the afore-stated properties by the Trustee in favor of Mrs. Tongco, the real owner thereof is in connection and in recognition of a trust, the said transfer, therefore, is not subject to the DST imposed under Section 196 of the Tax Code of 1997, as amended. However, the notarial acknowledgment to the Cancelation of Trust and Deed of Reconveyance is subject to the P30.00[1] DST as imposed under Section 188 of the same Tax Code.

Section 98 of the Tax Code of 1997, as amended, provides that a donor's tax is generally imposed on the transfer by any person, resident or non-resident, of property by gift. The donor's tax applies, whether such transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. The essential elements of a valid donation are: (1) the reduction of the patrimony of the donor, (2) the increase in the patrimony of the donee, and (3) the intent to do an act of liberality (animus donandi). In this case, there is no intention to donate on the part of the Trustee since the reconveyance merely transfers the ownership of the subject properties to the true owner, hence, the transfer of the properties to Mrs. Tongco by the Trustee is exempt from the donor's tax imposed under Section 98 of the same Tax Code.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue
051840

K-1

[1] The new DST rate of P30.00 was used since the transaction took place after to the effectivity of the TRAIN Law.