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

Sec.24(C), 1997 Tax Code, as amended
BIR Ruling No. 31-99
OT-0319-2020
JUN 15 2020

Herrera Teehankee & Cabrera Law Offices
5/F SGV II Building, 6758 Ayala Avenue
Makati City 1200

Attention: **<u>Atty. Arsenio C. Cabrera, Jr.</u>**
and
<u>Atty. Maximo Modesto Joel C. Flores</u>

Gentlemen:

This refers to your letter dated July 23, 2019 requesting on behalf of your client, Mr. Anil S. Buxani (the "Trustee/Assignor" or "Mr. Buxani") for confirmation of your opinion that the transfer and/or assignment of Rubiyat Holdings Corporation (the "Corporation") shares of stocks ("Rubiyat shares") held by him, as Trustee, in favor of the real beneficial owner thereof, Mr. Rajan Ashok Uttamchandani (the "Trustor/Assignee" or "Mr. Uttamchandani") is not subject to (1) income and capital gains taxes; (2) donor's tax; and (3) documentary stamp tax under the 1997 Tax Code, as amended.

Background:

1. On February 21, 2014, Mr. Buxani, the registered owner of [redacted] ([redacted]), common shares of the Corporation executed a "Declaration of Trust" in favor of Mr. Uttamchandani, who is the beneficial owner of the Rubiyat shares.

2. Under the Declaration of Trust, Mr. Buxani acknowledged and confirmed that:

   a) The funds used to pay for the Rubiyat shares were advanced by Mr. Uttamchandani;

   b) He is holding legal title to the Rubiyat shares in trust for Mr. Uttamchandani who is the real, actual and beneficial owner of the Rubiyat shares; and

   c) He has absolutely no interest or lien upon the Rubiyat shares whether now existing or merely inchoate.

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3. On November 20, 2018, the Corporation, then an entity in the process of incorporation, represented by its Treasurer-in-Trust, Ms. Angelita L. Maniacup and Mr. Buxani executed a Subscription Agreement whereby the latter subscribed to ( ) common shares with an aggregate par value of , Pesos (₱).

4. On March 19, 2019, the Corporation issued the corresponding Stock Certificate to Mr. Buxani.

5. On March 21, 2019, Mr. Buxani and Mr. Uttamchandani executed a Deed of Assignment wherein the former transferred and assigned all his rights and interests to the Rubiyat shares in favor of Mr. Uttamchandani.

6. On June 30, 2019, Mr. Buxani and Mr. Uttamchandani executed a Deed of Termination of Trust affirming that the Declaration of Trust dated February 21, 2014 is deemed terminated.

In reply, please be informed as follows:

1. Section 24(C) of the 1997 Tax Code, as amended, provides —

> "***(C) Capital Gains from Sale of shares of Stock not Traded in the Stock Exchange.***[1] – *The provisions of Section 39(B) notwithstanding, a final tax at the rate of fifteen percent (15%) is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange.*"

In several cases, this Office had occasion to rule that the transfer of shares of stocks in a domestic corporation held by a Trustee in favor of the Trustor without monetary consideration is not subject to income and capital gains taxes since the transfer is merely a confirmation of title/ownership in favor of the beneficial owner hence, not a sale, barter or exchange of the said shares of stock.[2]

Applying the foregoing, the transfer of the Rubiyat shares from the Trustee, Mr. Buxani to the Trustor, Mr. Uttamchandani, the real owner thereof, without monetary consideration and by virtue of the Declaration of Trust is not subject to income tax and capital gains tax.

2. Well-settled in our jurisprudence is the fact that 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).

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[1] The capital gains tax on sale of shares of stock not listed and not traded in a local stock exchange was increased from 5%/10% to 15% by RA 10963.

[2] BIR Rulings Nos. 31-99 dated 19 March 1999, DA-(C-315) 776-09 dated 14 December 2009; DA-392-08 dated 30 June 2008; DA-484-06 dated 9 August 2006; DA-291-2005 dated 27 June 2005; DA-485-2004 dated 10 September 2004;

Clearly, there is no intention on the part of Mr. Buxani to donate to Mr. Uttamchandani the Rubiyat shares which he held in trust for the latter as shown by the execution of the Declaration of Trust. Thus, the aforesaid transfer and/or assignment of the subject shares will not be subject to gift tax since there is no intention to donate, and the transaction is merely to be treated as a continuation and confirmation of ownership in favor of the ultimate and real beneficiary of the Rubiyat shares.

3. Under Section 191 of the Documentary Stamp Tax Regulations (Revenue Regulations No. 26), the conveyance of property to a trustee is exempt from documentary stamp tax (DST). Section 191 of said Regulations provides:

> "Section 191. Conveyance to trustees or from trustee to cestui que trust, without consideration. — Conveyances to a trustee without valuable consideration, or from a trustee to a cestui que trust without valuable consideration are not subject to tax."

Accordingly, the transfer of the said Rubiyat shares is not subject to DST imposed under Section 176 of the 1997 Tax Code, as amended. However, the notarial acknowledgment is subject to the DST of P pursuant to Section 188 of the same Tax Code as amended by Republic Act No.10963 or the TRAIN Law.

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

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