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

Sections 27 (D) (5), 98, 105, 196, all of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 051-2015
0595 - 2019
NOV 21 2019

PUYAT JACINTO & SANTOS
10/F 8 Rockwell, Hidalgo corner Plaza Drives,
Rockwell Center, Makati City

Attention: **ATTY. VIRGINIA B. VIRAY**

ATTY. KRISTIANNE S. MAGAT

Gentlemen:

This refers to your letter dated January 26, 2016 in behalf of your client, Rosa Maria Diaz Aboitiz ("Aboitiz"), requesting confirmation that the reconveyance of property under a Trust Agreement is exempt from capital gains tax, documentary stamp tax, and the corresponding withholding tax.

Documents submitted disclosed that on November 2, 2011, Aboitiz ("Trustor") and Unionbank of the Philippines – Trust and Investment Services Group ("Unionbank"/ "Trustee") entered into a Trust Agreement for a revocable living trust account which provides the following, among others:

INVESTMENT PORTFOLIO

*1. **Delivery of the Fund** – Upon execution of this Agreement, the TRUSTOR hereby entrusted, delivered and remitted to the TRUSTEE the amount of FOUR MILLION PHILIPPINE PESOS (PHP4,000,000.00), credited to a Trust account designated as "UNIONBANK OF THE PHILIPPINES TRUST ACCOUNT NO. 1B1-403-11".*

*2. **Composition** – The cash which the TRUSTOR has delivered to the TRUSTEE as well as such securities, real estate properties, club shares in which sums are invested, the proceeds, interest, dividends and income or profits realized from management, investment and reinvestment thereof shall constitute the managed funds and shall hereafter be designated and referred to as the "PORTFOLIO". For purposes of this Agreement, the term "securities" shall be deemed to include commercial paper, shares of stock, and other financial instruments.*

*3. **Additional delivery of funds** – At any time hereafter and from time to time at the discretion of the TRUSTOR, the latter may deliver additional funds to the TRUSTEE which shall form part of the PORTFOLIO and shall be subject to the same terms and conditions of this Agreement. No formalities other than a letter from the TRUSTOR and physical delivery to the TRUSTEE of cash will be required for any addition to the PORTFOLIO.*

Also, under the Trust Agreement, Aboitiz shall entrust properties to Unionbank which shall hold the same in its capacity as Trustee and it shall have the authority to exercise the powers granted under the Trust Agreement, to *wit*:

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POWERS AND DUTIES

6. Powers of the TRUSTEE – The TRUSTEE is hereby conferred the following powers: To invest or reinvest the PORTFOLIO in (1) Evidence of Indebtedness of the Republic of the Philippines and of the Bangko Sentral ng Pilipinas ("BSP"), and any other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or loans against such government securities. (2) Loans fully guaranteed by the government as to the payment of the principal and interest, (3) Loans fully secured by hold out on assignment or pledge of deposits or of deposits substitutes, or mortgage and chattel mortgage bonds, (4) Loans fully secured by real estate and chattels in accordance with Section 78 of R.A. No. 337, as amended, and (5) Such other investments or loans as may be directed or authorized by the TRUSTOR in a separate Agreement; Provided, that said written instrument shall contain the following minimum information: (a) The transaction to be entered into, (b) The amount involved, and (c) The name of the issuer, in case of securities and/or the name of the borrower and nature of security, in case of loans;

(a) To endorse, sign or execute any and all securities, documents or contracts necessary for or connected with the exercise of the powers hereby conferred or the performance of the acts hereby authorized;

(b) To cause any property of the PORTFOLIO to be issued, held or registered in the name of the TRUSTOR or of the TRUSTEE, provided that in case of the latter the instrument shall indicate that the TRUSTEE is acting in a representative capacity and that the TRUSTOR's name is disclosed thereat;

xxx xxx xxx

On November 15, 2011, Aboitiz wrote a letter to Unionbank, in relation to Trust Account No. , authorizing the latter to invest the funds of the said Trust Account in a condominium unit, as follows:

Condominium Certificate of Title No.	*71200 (issued by the Registry of Deeds of Makati City)*
Registered Owner	*First Philippine Holdings Corporation*
Address	*Unit Nos. 38-A and 39-A Luna Gardens Condominium, 21 Residential Drive, Rockwell Center, Makati City*
Floor Level	*Thirty-Eight (38th)*
Floor Area	*Four Hundred Forty-Nine Square Meters (499 sq. m.)*
Number of Car Parking Slots	*Three (3)*
Car Parking Slot Nos.	*1419, 1420, 1421*
Purchase Price	***FIFTY-EIGHT MILLION PESOS** (PhP)*

The same letter also authorized Unionbank to transact with First Philippine Holdings Corporation and to carry out and effect any and all legal acts required to accomplish the above-described transaction. Thus, on November 17, 2011, Unionbank has entered into a Deed of Absolute Sale with First Philippine Holdings Corporation acquiring the above-mentioned Condominium Unit for the sum amount of **inclusive of value added tax (VAT) (PhP 0)**[1]. Thereafter, Condominium Certificate of Title

[1] See Cash Flow (Annex "A"), Investment Activity Report (Annex "B"), Schedule of Investments/Portfolio Analysis (Annex "C"), Income Statement (Annex "D"), and Balance Sheet (Annex "E"), all for Trust Account No. the period covered October 27 – December 2011.

No 3 was issued by the Registry of Deeds for Makati City, under the name of Unionbank as Trustee of Trust Account No.

On December 10, 2015, Aboitiz and Unionbank has agreed to terminate the Trust Account and, thus, reconvey the Condominium Unit to its true owner, Aboitiz. The agreement to terminate the Trust Account resulting in reconveyance of the Condominium Unit to its true owner, Aboitiz, was without monetary consideration. Also, there is no change in the beneficial ownership. Hence, this request.

In reply thereto, please be informed that your opinion is hereby confirmed. The transfer of title of the afore-stated property by Unionbank in favor of the beneficiary, Aboitiz, who is the beneficial owner thereof is not subject to capital gains tax imposed under Section 27 (D) (5) of the National Internal Revenue Code of 1997, as amended, nor to the creditable withholding tax prescribed in Revenue Regulations (RR) No. 2-98, as amended, considering that the conveyance is not motivated by a valuable consideration and merely acknowledges and confirms the legal title and beneficial ownership over the property in the name of Aboitiz, the Trustor. [2]

Moreover, in BIR Ruling No. 031-99 dated March 19, 1999, this Office has already ruled 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."*

Furthermore, the Termination of Trust Agreement and Reconveyance of Assets executed to terminate the trust relationship between Unionbank and Aboitiz and the consolidation of the legal title and beneficial ownership over the subject property is a conveyance without monetary consideration, and as such not subject to the documentary stamp tax imposed under Section 196 of the National Internal Revenue Code of 1997, as amended. However, the notarial acknowledgment to such instrument is subject to the documentary stamp tax of P15.00[3] under Section 188 of the same Code.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[2] BIR Ruling No. 051-2015 dated February 24, 2015.

[3] The old rate of P15.00 was used since the transaction took place prior to the effectivity of RA No. 10963 (TRAIN Law).