REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 27(D)(5); RR 2-98: RR 16-05
BIR Ruling No. 021-02 BIR Ruling No. 363-14
522-2017

11-7-20 7

QUISUMBING TORRES LAW OFFICES
12th Floor, Net One Center
26th Street, cor. 3rd Avenue
Crescent Park West, Bonifacio Global City
Taguig City

Attention: **Atty. Dennis G. Dimagiba**
and
Atty. Kristine Anne V. Mercado-Tamayo

Gentlemen:

This refers to your letter dated October 25, 2011, requesting on behalf of your client, Estate of Ciriaco Tuason ("Estate"), for confirmation that the transfer of properties from C. Tuason e Hijos, Inc. to the judicial Administrator, Atty. Ramon J. Quisumbing, is not subject to income tax either by way of creditable withholding tax (CWT) or capital gains tax (CGT), and that the transfer is also not subject to value-added tax (VAT) and donor's tax.

Documents submitted show that the Estate is the subject of Special Proceeding No. 06-114796, pending before the Regional Trial Court of Manila, Branch 41. The Estate is represented by its duly appointed judicial Administrator, Atty. Ramon J. Quisumbing.

On January 24, 2011, the Estate filed a Petition ("Petition") for Liquidation of C. Tuason e Hijos, Inc. ("CTHI") with the Regional Trial Court of Manila, Branch 24 ("Court").

CTHI was incorporated in 1934 as a family or closely held corporation, with its principal place of business at 1174 Agno Street, Malate, Manila. CTHI had a corporate term of fifty (50) years from 1934. Thus, its corporate term expired in 1984 or 26 years ago. In view of the expiration of the corporate term of CTHI and/or the dissolution of CTHI, the Estate, as the 100% beneficial stockholder of CTHI, filed the Petition for the liquidation of the remaining assets of CTHI for the interest of and eventual distribution to its stockholder, in order to fully settle and finally close all of CTHI's corporate affairs.

The Estate also prayed that Atty. Ramon J. Quisumbing be appointed as Liquidator of CTHI for the purposes of liquidating CTHI's remaining properties, settling its obligations and distributing its remaining assets.

In a decision rendered on June 6, 2011 ("Decision"), the Court resolved the Petition, as follows:

(1) CTHI is declared dissolved;

(2) Atty. Quisumbing of Quisumbing Torres Law Office is appointed the liquidator of CTHI;

(3) Title of the assets/properties of CTHI is directed transferred to the liquidator for the benefit of CTHI's stockholders, creditors, and others in interest; and

(4) Atty. Quisumbing is directed to make quarterly report on the liquidation.

In support of your request, you attached copies of the following documents:

1. Petition for Liquidation of C. Tuason e Hijos, Inc. dated January 12, 2011 filed with the Court on January 24, 2011 and all annexes attached thereto; and

2. The Court's Decision dated June 6, 2011, directing the transfer of title of the assets/properties of CTHI to the liquidator for the benefit of CTHI's stockholders, creditors, and others in interest.

In reply, please be informed as follows:

1. The transfer of the assets/properties to the liquidator is not subject to income tax.

Under Section 27 (D) (5) of the Tax Code of 1997 ("Tax Code"), a final tax of six percent (6%) is imposed on the gains presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6(E) of the Tax Code, whichever is higher, of such lands and/or buildings.

On the other hand, in case of real property other than capital asset, Section 2.57.2(J) of Revenue Regulations No. 2-98, as amended, provides that a creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer, in accordance with a prescribed schedule.

In order for income to accrue, there must be a transfer by the corporation of beneficial ownership of the properties. The transfer of beneficial ownership is indispensable for the imposition of any capital gains on the corporation as a result of the transfer.

In the instant case, because there is no transfer of ownership. but rather, *a trust is to be created* pursuant to the Decision ordering the transfer of the assets/properties of CTHI to the liquidator. with no monetary consideration involved for such transfer, it is clear that the transfer of the aforesaid properties in favor of the liquidator and for the benefit of CTHI's stockholders, creditors, and others in interest, will not be subject to capital gains tax imposed under Section 27 (D) (5) of the Tax Code nor to the expanded withholding tax prescribed in Revenue Regulations No. 2-98, as amended. *(BIR Ruling No. 021-02 dated May 31, 2002)*

Article 1453 of the New Civil Code provides, to wit:

> "When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated."

Thus, an implied trust was created by virtue of the Court's Decision directing the transfer of title of the assets/properties of CTHI to the liquidator for the benefit of CTHI's stockholders, creditors, and others in interest.

2. The transfer of the assets/properties to the liquidator is not subject to Value-Added Tax.

The Tax Code imposes Value-Added Tax ("VAT") on the sale of goods or properties in the Philippines in the course of trade or business. The term "goods or properties" refers to all tangible and intangible objects which are capable of pecuniary estimation.

VAT is imposed where the transfer of properties is made in the course of business.

Where the transfer is pursuant to a court decision ordering the transfer of title of assets/properties to a liquidator for the benefit of the transferor's stockholders, creditors, and others in interest, in relation to a liquidation proceeding, the transfer is clearly not made in the course of business and thus should not be subject to VAT. This Office, citing Revenue Regulations (RR) No. 16-05, as amended, has ruled that transmission of property to the liquidator of a company, as trustee, shall not be subject to VAT, as the property will be merely held in trust for the company's unsecured creditors. *(BIR Ruling No. 021-02 dated 31 May 2002)* Section 4.106-3 of RR No. 16-05 provides, as follows:

> "SEC. 4.106-3. Sale of Real Properties. —
>
> xxx xxx xxx"

> Transmission of property to a trustee shall not be subject to VAT if the property is to be merely held in trust for the trustor and/or beneficiary. However, if the property transferred is one for sale, lease or use in the ordinary course of trade or business and the transfer constitutes a completed gift, the transfer is subject to VAT as a deemed sale transaction pursuant to Sec. 4.106-7(a)(1) of these Regulations. The transfer is a completed gift if the transferor divests himself absolutely of control over the property, *i.e.*, irrevocable transfer of corpus and/or irrevocable designation of beneficiary."

3. The transfer of the assets/properties to the liquidator is not subject to Donor's Tax.

Under Section 98 of the Tax Code, 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.

In order that donor's tax will accrue in a direct gift, the element of *donative intent* is indispensable.

In the instant case, the transfer by CTHI is without monetary consideration but is, rather, pursuant to a Court Order in relation to CTHI's liquidation. It cannot be said that CTHI was motivated by any donative intent in transferring and contributing the properties to the liquidator.

Based on these facts, it is evident that CTHI cannot be held liable for donor's tax on the transfer of the properties to the liquidator in the absence of any donative intent.

However, should the Liquidator, as trustee, sell or convey such property either to any creditor or any person in the future, the deed of transfer to be executed by the Liquidator will be subject to the capital gains tax or withholding tax as the case may be, to the VAT, if applicable, as well as to the documentary stamp tax under Section 196 of the Tax Code of 1997, as amended.

4. Applicable taxes in case of transfer of the assets/properties to the stockholders by CHTI/Liquidator

a. Income Tax

The second paragraph of Section 73 (A) of the Tax Code of 1997 states:

> "Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be."

Moreover, Section 8 of Revenue Regulations (RR) No. 6-2008, states:

> SEC. 8. Taxation of Surrender of Shares by the Investor upon Dissolution of the Corporation and Liquidation of Assets and Liabilities of Said Corporation. — Upon surrender by the investor of the shares in exchange for cash and property distributed by the issuing corporation upon its dissolution and liquidation of all assets and liabilities, the investor shall recognize either capital gain or capital loss upon such surrender of shares computed by comparing the cash and fair market value of property received against the cost of the investment in shares. The difference between the sum of the cash and the fair market value of property received and the cost of the investment in shares shall represent the capital gain or capital loss from the investment, whichever is applicable. If the investor is an individual, the rule on holding period shall apply and the percentage of taxable capital gain or deductible capital loss shall depend on the number of months or years the shares are held by the investor. Section 39 of the Tax Code, as amended, shall herein apply in all possible situations.
>
> The capital gain or loss derived therefrom shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations."

Thus, in the event that the liquidating dividend in the form of properties is more than the amount/value of investment, the gain realized by a stockholder from the distribution of the assets in liquidation is subject to the normal tax in like manner as if he had sold his stock to third persons. (Wise & Co. vs. Bibiano L. Meer, 078 Phil. 655, dated June 30, 1947) Nonetheless, this Office has held that the liquidating gain, which is the difference between the adjusted cost of the shares and the fair market value of the properties given as liquidating dividend is subject to the ordinary income tax rates and not to the capital gains tax on the sale of shares. (*BIR Ruling No. 363-14 dated September 22, 2014*)

Accordingly, the gain which is the difference between the adjusted cost of the shares and the fair market value of the properties given as liquidating dividend to the stockholders shall be subject to the ordinary income tax rates and not to the capital gains tax on the sale of shares.

b. Documentary Stamp Tax (DST)

Section 189 of Revenue Regulations No. 26, otherwise known as the Documentary Stamp Tax Regulations provides, viz.:

> "Section 189. Conveyances by corporation to owner of all the capital. — A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax."

W.

Pursuant to the above-quoted provision, the distribution of the assets of the corporation to its stockholders in liquidation of the business without consideration is viewed as a return of capital to the shareholders. Considering this, the provision of Section 196 of the Tax Code of 1997, as amended, shall not apply. Thus, it has been held that a corporation that distributes its assets to its shareholders as liquidating dividends is not deemed to be selling such assets to the latter. Accordingly, the transfer by the corporation to the stockholders of the properties shall not be subject to DST imposed under said Section 196 of the Tax Code, as amended. The notarial certification on the deed of transfer is, however, subject to the DST of P15.00 imposed under Section 188 of the same Tax Code. (*BIR Ruling No. 363-14 dated September 22, 2014*)

c. Valued-Added Tax

Pursuant to Section 106 (B) (4) of the Tax Code of 1997, as amended, which provides that:

> "Section 106. Value-Added Tax on Sale of Goods or Properties. —
> xxx xxx xxx
> (B) Transactions Deemed Sale. — The following transactions shall be deemed sale:
> xxx xxx xxx
> (4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement and cessation."

Hence, the conveyance of the properties by CTHI to the stockholders as liquidating dividends will fall under the purview of the above-quoted provision and shall be subject to the 12% Value-Added Tax.

Finally, the stockholders who shall sell the real property received by them as liquidating dividends immediately after title thereto is transferred to their name shall be subject to the final capital gains tax imposed under Section 24 (D) (1) of the Tax Code, as amended, in the case of individual stockholders/distributees, and Section 27 (D) (5) thereof, in the case of corporate stockholders/distributees. (*BIR Ruling No. 363-14 dated September 22, 2014*)

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 as null and void.

Very truly yours.

CAESAR R. DULAY
Commissioner of Internal Revenue

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