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

Sec. 27(D)(5), NIRC of 1997, as amended
BIR Ruling No. 779-2018
OT-0627-2020
NOV 03 2020

MISSIONARY SOCIETY OF ST. COLUMBAN
1857 Singalong Street
Manila

Attention: **Father Paul Glynn SSC**
Regional Director

Gentlemen:

This refers to your letter dated July 2, 2020 requesting for tax exemption on the reconveyance of real property from the Roman Catholic Archbishop of Manila to the Regional Director of the Missionary of St. Columban in the Philippines, Inc[1].

As represented, on April 18, 1988, the Society of St. Columban acquired a parcel of land with improvement from Mrs. Violeta Ymzon Bondoc and her six (6) children located at No. 55 Twin Hills St., Rolling Hills Subdivision, New Manila, Quezon City, covered by Transfer Certificate of Title (TCT) No. [redacted]. However, because of doubts as to whether it could own a real property in the Philippines, Society of St. Columban asked the Roman Catholic Archbishop of Manila to place under its name the said property, to which the latter agreed. Thus, a Deed of Trust was executed in April 18, 1988.

On October 10, 2019, the Society of St. Columban requested the Roman Catholic Archbishop of Manila for the reconveyance of the above-mentioned parcel of land and its improvement, to which the latter agreed. Therefore, on March 4, 2020, the Roman Catholic Archbishop of Manila executed a Release of Trust in favor of the Regional Director of the Missionary of St. Columban in the Philippines, Inc. conveying unto the latter the said parcel of land [TCT No. [redacted] ([redacted]) and Tax Declaration (TD) No. [redacted]] and its improvement (TD No. [redacted]). Hence, this request.

In reply, please be informed that Section 27(D)(5) of the Tax Code of 1997, as amended, provides, *viz*:

"SEC. 27. Rates of Income tax on Domestic Corporations. –

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[1] Formerly: The Missionary Society of St. Columban in the Philippines, Inc.

(D) Rates of Tax on Certain Passive Incomes. –

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> *(5) Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings. - A final tax of six percent (6%) is hereby imposed on the gain 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 of fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, of such lands and/or buildings."*

Under the above-quoted provision, capital gains presumed to have been realized from the sale, exchange, or disposition of lands and/or buildings which are not actually used in the business of the corporation and are treated as capital assets shall be taxed at the rate of 6% based on the gross selling price or the fair market value thereof, whichever is higher. In the instant case, however, there is no sale, exchange or disposition of real property involved, since the Regional Director of Missionary of St. Columban is the real owner of the subject realty, while Roman Catholic Archdiocese of Manila merely acted as trustee. The conveyance by the Trustee in favor of the Trustor of the subject properties which the former acquired by virtue of the Deed of Trust 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. Likewise, the transaction is not predicated by a valuable consideration considering that the reconveyance is ostensibly just for return of 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 the Regional Director of Missionary of St. Columban, the Trustor.

Accordingly, the transfer of title of the afore-stated properties by the Trustee in favor of the Trustor, who is the beneficial owner thereof, is not subject to capital gains tax imposed under Sec. 27 (D)(5) of the Tax Code of 1997, as amended or 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.[2]

Moreover, under Section 196 of the Tax Code of 1997, as amended, the deeds or documents subject to the documentary stamp tax (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. Also, 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. Since the reconveyance of the afore-stated properties by the Trustee in favor of the Regional Director of Missionary of St. Columban is a transfer of ownership to the real

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[2] BIR Ruling No. 779-2018 dated May 8, 2018

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owner thereof 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 Release of Trust is subject to the P30.00 DST as imposed under Section 188 of the same Code.

Furthermore, Section 98 of the Tax Code of 1997, as amended provides that 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, however, there is no intention to donate on the part of the Trustee since the reconveyance merely transfers the ownership of the subject realty to the true buyer/owner. Hence, the transfer of the properties to the Regional Director of Missionary of St. Columban by the Trustee is exempt from the donor's tax imposed under Section 98 of the Tax Code of 1997, as amended

Finally, the reconveyance is not subject to value-added tax (VAT) because the said realty is not held primarily for sale to customers or for lease in the ordinary course of business.[3]

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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[3] BIR Ruling No. 779-2018 dated May 8, 2018