REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Section 27 (A) of the Tax Code, as amended.
-
016-2025
JAN 07 2025

CITYLAND DEVELOPMENT CORPORATION
2/F & 3/F Cityland 10 Tower 1, 156 H.V. Dela Costa St.
Ayala North, Makati City 1226

Attention: **Atty. Andre Anton S. Suarez**
Legal Counsel

Gentlemen:

This refers to your request for a ruling on whether the reconveyance of a parcel of land without consideration is exempt from creditable withholding tax (CWT), and documentary stamp tax (DST).

It is represented that on June 17, 2022, a Deed of Sale was entered into between Ma. Socorro I. Clavano married to Carlitos V. Clavano (Owners) and Cityland Development Corporation (Cityland), wherein the latter purchased from the former a parcel of land with an area of 2,625 square meters (sqm.), more or less, excluding the existing improvements thereon, identified as Lot No. of the subdivision plan (LRC) PSD- being a portion of Lot (LRC) PSD-. , situated in Brgy. Santolan now under Brgy. Dela Paz, Pasig City and covered by Transfer Certificate of Title (TCT) No. (PT- (subject property)[1]. It was subsequently discovered that a 56.98 sqm. portion of the subject property was affected by the overlapping of the structures of the adjacent lot (excluded area).

As a consequence thereof, Cityland deducted from the total purchase price the amount equivalent to the excluded area from the subject property. Moreover, the excluded area was segregated from the subject property and thereafter reconvened to the Owners without any consideration as per Deed of Reconveyance dated July 11, 2023 (subject transaction).

From the foregoing, you are of the opinion that the subject transaction is not subject to CGT under Section 24 (D) (1) of the National Internal Revenue Code of 1997 (Tax Code), as amended, there being no consideration to the reconveyance. You are likewise of the opinion that the subject transaction is not subject to CWT and DST prescribed in Revenue Regulations (RR) No. 2-98, as amended and Section 196 of the Tax Code, as amended.

In reply, please be informed that this Office is constrained to not subscribe to your opinion towards the taxability of the subject transaction. The Tax Code, as amended, does not define nor qualify the phrase "*transfer*", thus, it must be applied without attempted or strained interpretation. It shall be construed in its plain and simple meaning. The word "*transferencia*"

[1] The subject property is presently covered by TCT No and registered in the name of Cityland

(transfer) is defined by the "*Diccionario de la Academia de la Lengua Castellana*" as "*accion y efecto de transferir*" (the act and effect of transferring); and the verb "*transferir*", as "*ceder o renunciar en otro el derecho o dominio que se tiene sobre una cosa, haciendole dueno de ella*" (to assign or waive the right in, or absolute ownership of, a thing in favor of another, making him the owner thereof). The word "*transfer*" is defined as follows: Transfer means any act by which property of one person is vested in another.[2]

The subject transaction, not being categorically exempt from, or subject to another tax treatment pursuant to provisions of the Tax Code, as amended, or other special tax laws, is therefore considered taxable notwithstanding its lack of consideration.

From the foregoing, the statutory taxpayer in the subject transaction is evidently Cityland. Accordingly, being an entity engaged in real estate business, the reconveyance of the excluded area by Cityland is considered a transfer of ordinary asset pursuant to the provisions of RR No. 7-2003,[3] thus, subject to corporate income tax and value-added tax pursuant to Sections 27 (A) and, 105 to 106 of the Tax Code, as amended.

Consequently, the owners are likewise bound by Section 2.57.2 (F) of RR No. 2-98, as amended, *viz*:

> *"SEC. 2.57.2. Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:*
>
> *xxx xxx xxx*
>
> *(F) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange, or transfer of real property classified as ordinary asset. — 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 the following schedule:*
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> *xxx xxx xxx*
>
> *B. Upon the following values of real property, where the seller/transferor is habitually engaged in the real estate business:*

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[2] Monsèratt v. Ceron, G.R. No. 37078, September 27, 1933

[3] Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27(E) and 28(A)(2) of the Same Code

OT- 016 - 2025
JAN 07 2025

With a selling price of Five Hundred Thousand Pesos (₱500,00.00) or less	*1.5%*
With a selling price of more than Five Hundred Thousand Pesos (₱500,00.00) but not more than Two Million Pesos (₱2,000,000.00)	*3.0%*
With a selling price of more than Two Million Pesos (₱2,000,000.00)	*5.0%*

xxx xxx xxx

Gross selling price shall mean the consideration stated in the sales document or the fair market value determined in accordance with Section 6 (E) of the Code, whichever is higher. xxx

If the buyer is an individual not engaged in trade or business, the following rules shall apply:

xxx xxx xxx

(ii) If, on the other hand, the sale is on a 'cash basis' or is a 'deferred-payment sale not in the installment plan' (that is, payments in the year of sale exceed 25% of the selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property, whichever is higher, on the first installment."

Furthermore, the subject transaction, being a disposition of real property under the Tax Code, as amended, is likewise subject to the documentary stamp tax (DST) imposed in Section 196 of the same Code.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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