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

RA No. 10752; Section 24 (D) (1) of the Tax Code of 1997, as amended
BIR Ruling No. 983-2018; BIR Ruling No. 389-2016
OT - 034-2023
MAY 05 2023

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
Roads Management Cluster I (Bilateral)
Unified Project Management Office
NCR Comp. 2nd St., Port Area
Manila

Attention: **Benjamin A. Bautista**
Project Director

Gentlemen:

This refers to your inquiry on whether or not it is legally possible to pay the capital gains tax (CGT) and documentary stamp tax (DST) of an acquired property based on the rates prevailing during the time of taking of the property concerned.

The inquiry is predicated upon the property owned by a certain Ms. Camilia Bernardo ("Ms. Bernardo") which was acquired by your Office as it was affected by the construction of the Arterial Road Bypass Project Phase I. It is represented that before the payment can be given to Ms. Bernardo, the CGT and DST for the said transfer of property should first be settled. Acting on the said predicament, your Office commenced the processing of the payment of said taxes before Revenue District Office (RDO) No. 25A – West Bulacan ("RDO West Bulacan"). However, RDO West Bulacan did not give due course to your application because you were required to use the current fair market value of the said property as the basis for the computation of the CGT and DST, and not the value at the time it was taken. Hence this request.

In reply, please be informed that Section 6 (6.11) of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 10752 ("new IRR") provides for the extent of applicability of the said IRR in outstanding claims for Right-of-Way (ROW) payments, *viz*:

"Section 6. NEGOTIATED SALE

xxx xxx xxx

6.11 Outstanding Claims for ROW Payments

> *In accordance with Section 5 of the Act,* ***the provision of Section 6.1 of this IRR shall also apply to outstanding claims for right-of-way payments, except that the amount to be offered shall be the price at the time of taking of the property, including legal interest until fully paid,*** *subject to the transitory provision in Section 19 of this IRR."* (Emphasis and underscoring supplied)

Corollary, Section 19 of the new IRR provides:

> *"Section 19. TRANSITORY CLAUSE*
>
> *As provided in Section 14 of the Act,* ***the provisions of this IRR shall apply to all ROW transactions, except ongoing transactions which, as of the effectivity of this Act, have already reached a written agreement as to the price between the IA and the property owner."*** (Emphasis and underscoring supplied)

A cursory reading of the afore-cited provisions reveal that the new IRR governs negotiated sales except on the consideration of outstanding claims which have already been concluded prior to the effectivity of RA No. 10752. Likewise, the new IRR does not apply on the amount to be offered on outstanding claims for ROW payments which is limited only to the price at the time of taking of the property including legal interest until fully paid.

In computing the CGT on outstanding claims for ROW payments, the new IRR governs which this Bureau had the occasion to clarify in BIR Ruling No. 983-2018 dated June 7, 2018 and BIR Ruling No. 389-2016 dated November 14, 2016 wherein it was ruled that Section 5 (c) of RA No. 10752 must be read in relation to Section 24 (D) (1) of the National Internal Revenue Code (Tax Code) of 1997, as amended. Thus, the tax base of CGT, in case of negotiated transfer of right-of-way site or location for National Government Infrastructure Projects shall be gross selling price or zonal value of the real property as determined in accordance with Section 6 (E) of the Tax Code of 1997, as amended, whichever is higher.

It bears stressing that the date of notarization of the deed of sale between the implementing agency and the affected land owner is the operative act that should be ascertained in computing the CGT as it serves as the reckoning point for the presumed gain or profit realized or received, actually or constructively.

Congruently, the legal consequences of the conveyance produce only its effects, insofar as this Bureau is concerned, after the notarization of the Deed of Sale. This can be gleaned from the rule that a private conveyance is valid between the parties[1] and does not include those who are not privy thereto. The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article

[1] Diampoc v. Bunaventura, G.R. No. 200383, March 19 2018

1358 of the Civil Code, is only for convenience[2] or to bind third persons.[3] This is in line with the implications under the rules of evidence as elaborated in the case *Dela Rama v. Papa*[4], *viz*:

> *"Under Section 19, Rule 132 of the Rules of Court, '**documents acknowledged before a notary public** except for last wills and testaments' **are deemed as public documents**, and as such, under Section 23 of the same Rule, **they are evidence of the fact which gave rise to its execution and as to its date.**"* (Emphasis and underscoring supplied)

Thus, in this case, granting that a duly notarized deed of sale was executed between your Office and Ms. Bernardo in 2011, the gross selling price or the zonal value during the said year, whichever is higher, shall be the basis for computing the CGT in accordance with the formula provided in the new IRR. This, however, is subject to penalties and surcharges incidental to the belated payment of the CGT. On the other hand, if the deed of sale was only notarized after the time of taking, the basis for computing the CGT shall be the gross selling price or the prevailing zonal value at the time of notarization, whichever is higher.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
007172

K-1-FFR

[2] Manlan v. Beltran, G.R. No. 222530, October 16, 2019
[3] Diampoc v. Bunaventura, *Supra*
[4] G.R. No. 142309, January 30, 2009